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PENAL LEGISLATION
IN THE NEW CODE OF CANON LAW

BOOKS BY

Very Rev. H. A. Ayrinhac,
S.S., D.D., D.C.L.

President of St. Patrick's Seminary,
Menlo Park, Calif.

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PENAL LEGISLATION IN THE NEW CODE OF CANON LAW.
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This is an explanation of the fifth book of the Code and treats the entire legislation now in force on ecclesiastical offences and penalties.

PENAL LEGISLATION
IN THE NEW CODE OF CANON LAW

(LIBER V)

BY

VERY REV. H. A. AYRINHAC, S.S., D.D., D.C.L.
President of St. Patrick's Seminary, Menlo Park, Cal.
Professor of Moral Theology and Canon Law.

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FOREWORD

THIS work is but a brief explanation of the fifth book of the Code, which contains the whole legislation now in force on ecclesiastical offences and penalties.

The order followed is that of the Code itself, and the text of the law is adhered to as closely as possible. Some canons are passed over rapidly, as being of rarer application; a more thorough discussion is reserved for others which are more practical in English-speaking countries.

The theory of delinquency, responsibility and imputability, formulated, for the first time, in a complete and explicit manner, by the legislator, at the beginning of this book, to serve as a foundation for the penal enactments which follow, cannot fail, although general and more abstract, to prove of interest not only to canonists but also to moralists and jurists.

Of special importance for all, and chiefly for confessors, is that portion of the legislation which concerns censures.

The Constitution *Apostolicae Sedis* cannot serve as our guide in this matter any longer. Several of the old censures have been abrogated; others have been modified and some new ones have been added. At the same time the extensive faculties formerly granted to our Bishops and subdelegated by them to priests for the absolution of reserved cases, were considerably restricted.

As a consequence, in order to understand the extent of their powers, pastors and confessors will, henceforth, need a more detailed knowledge of the provisions of the common law. It is principally to help them in its acquisition that these pages have been written.

CONTENTS

PAGE
FOREWORD 7
INTRODUCTION 21

PART I

OF DELINQUENCIES

TITLE I

NATURE OF DELINQUENCY AND ITS DIVISIONS 26
I. Nature of Delinquencies 26
II. Malice and Gravity of Delinquencies 27
III. Various Kinds of Delinquencies 28
  1°. Occult, Public, Notorious. (Can. 2197.) . . 28
  2°. Ecclesiastical, Civil, Mixed Delinquencies. (Can. 2198) 30
  3°. Other Divisions 30

TITLE II

IMPUTABILITY OF DELINQUENCIES; CAUSES WHICH INCREASE OR DIMINISH IT; COOPERATION IN DELINQUENCIES; JURIDICAL EFFECTS OF DELINQUENCIES . 31
I. Imputability of Delinquencies 31
II. Causes Which Take Away or Diminish Imputability 32
  1°. Want of the Use of Reason 32
  2°. Ignorance 33
  3°. Neglect of Proper Diligence. (Can. 2203) . . 35
  4°. Age 36
  5°. Violence, Fear, Necessity. (Can. 2205.) . . 37
  6°. Passion. (Can. 2206.) 38
  7°. Personal Dignity and Responsibility. (Can. 2207.) 39
  8°. Relapse. (Can. 2208.) 40

PAGE
III. Cooperation in Delinquencies. (Can. 2209.) . . . 41
1°. Nature and Various Forms of Cooperation . . 41
2°. Imputability in Cooperation 43
3°. Former Legislation 43
4°. Present Legislation 44
IV. Juridical Effects of Delinquencies. (Can. 2210–2211.) 46

TITLE III

ATTEMPTED DELINQUENCIES 47
I. Nature and Various Forms. (Can. 2212.) . . . 47
1°. Nature 47
2°. Various Forms and Degrees of Criminal Attempts 48
II. Imputability and Punishment of Attempted Delinquencies. (Can. 2213.) 49
1°. Former Legislation 49
2°. Present Law 50

PART II

PENALTIES

SECTION 1

PENALTIES IN GENERAL

I. Existence and Use of the Coercive Power in the Church. (Can. 2214.) 53

TITLE IV

NATURE, SPECIES, INTERPRETATION AND APPLICATION OF PENALTIES 54
I. Nature of Ecclesiastical Penalties. (Can. 2215.) . 54
II. Different Kinds of Ecclesiastical Penalties. (Can. 2216–2217) 55
1°. Division of Ecclesiastical Penalties 55
2°. Various Ways in Which Penalties are Inflicted or Incurred 55
III. Application of Penalties. (Can. 2218) 57
1°. Punishments Must Be in Due Proportion to the Delinquency 57
IV. Interpretation of Penalties. (Can. 2219.) . . . 58

TITLE V

PAGE
SUPERIORS HAVING COERCIVE POWER 59
I. Enactment of Penalties. (Can. 2220.) 59
1°. Penal Laws and Precepts 59
2°. Penal Sanctions 60
3°. Particular Punishments 60
II. Application of Penalties. (Can. 2223–2225.) . . . 61
1°. The Mission of the Judge Is to Apply, Not to Make or Amend Laws 61
2°. Number of Punishments 62
3°. Manner of Proceeding 64

TITLE VI

THE PERSONS WHO ARE SUBJECT TO THE COERCIVE POWER 64
I. Who May Incur Ecclesiastical Penalties? (Can. 2226.) 64
1°. In General 64
2°. In Particular 65
II. Causes Excusing from Penalties 67
1°. Ignorance 67
2°. Lack of Deliberation 69
3°. Fear 69
4°. Age. (Can. 2230.) 69
III. Cooperators and the Penalties They Incur. (Can. 2231.) 70
IV. When Punishments *Latae Sententiae* Take Effect. (Can. 2232.) 71
1°. General Principle 71
2°. Former Legislation 71
3°. Present Legislation 72
V. When Can a Penalty Be Inflicted? 74
VI. Culprits Guilty of Several Delinquencies. (Can. 2234.) 76
VII. Punishment of Attempted or Frustrated Delinquencies. (Can. 2235) 76

TITLE VII

REMISSION OF PENALTIES. (Can. 2236–2240.) 77
I. General Notions 77
II. Ordinary Power to Release from Penalties . . . 78
III. Quasi-Ordinary Power of Bishops to Release from Penalties 79
1°. Former Discipline 79
2°. Present Legislation 80
A. In Public Cases 80
B. In Occult Cases 82

PAGE
IV. Conditions for Remission of Penalties 82
V. Mode of Release from Ecclesiastical Penalties. (Can. 2239.) 83
VI. Prescription of Penal Actions. (Can. 2240.) . . 84

SECTION II

PENALTIES IN PARTICULAR

TITLE VIII

MEDICINAL PENALTIES OR CENSURES 85

CHAPTER I

CENSURES IN GENERAL 85
I. Nature of Censures. (Can. 2241.) 85
  1°. General Notion 85
  2°. Definition of Censure 86
  3°. Gravity and Use of These Penalties 88
II. Conditions for Contracting Censures. (Can. 2242.) 88
III. Appeal from or Recourse Against Censures. (Can. 2243.) 90
  1°. Appeal from Censures Already Inflicted . . . 90
  2°. Threat of Censure 91
IV. Multiplication of Censures in the Same Subject. (Can. 2244.) 92
  1°. Possibility of Such Multiplication 92
  2°. Causes of Multiplication of Censures 92
V. Reservation of Censures. (Can. 2245.) 94
  1°. Nature and Existence 94
  2°. Different Kinds of Reservations 94
  3°. Restrictions on Reservations. (Can. 2246–2247.) 96
VI. Absolution from Censures. (Can. 2248.) . . . 97
  1°. Necessity, Obligation, Efficacy 97
  2°. Absolution from Several Censures 98
  3°. Absolution from Censure and from Sin. (Can. 2250.) 100
  4°. Absolution in the Internal and in the External Forum. (Can. 2251.) 101
  5°. Absolution in Cases of Danger of Death. (Can. 2252.) 103
  6°. Absolution Outside the Case of Danger of Death or of Necessity. (Can. 2253.) 103
  7°. Absolution from Censure in Cases of Urgent Necessity. (Can. 2254.) 105
    A. Former Discipline 105
    B. Present Legislation 108

CHAPTER II

PAGE
CENSURES IN PARTICULAR 113
General Notions; Various Kinds of Censures; Their Characteristics 113
1°. Kinds 113
2°. Main Characteristics 113
3°. Some Terms Used in Defining the Effects of Censures. (Can. 2256.) 114

ARTICLE I

EXCOMMUNICATION 115
I. Nature and Degrees of Excommunication . . . 115
1°. Nature 115
2°. Degrees of Excommunication 117
A. Major and Minor Excommunication . . . 118
B. Vitandi et non Vitandi, aut Tolerati . . . 119
C. Anathema 120
II. Effects of Excommunication. (Can. 2259.) . . . 121
1°. Divine Offices 121
2°. Use of the Sacraments and Sacramentals; Christian Burial 122
3°. Administration or Active Use of the Sacraments and Sacramentals 122
4°. Indulgencies, Suffrages and Public Prayers of the Church. (Can. 2262.) 123
5°. Ecclesiastical Legitimate Acts, Forum, Offices, and Functions 124
6°. Ecclesiastical Jurisdiction 125
7°. Ecclesiastical Appointments, Promotions, Favors 126
8°. Dignities, Offices, Benefices, Pensions, Functions in the Church 126
9°. Social Intercourse 126

ARTICLE II

INTERDICT 127
I. Nature of Interdict 128
II. Different Kinds of Interdict 129
1°. Local, Personal or Mixed Interdicts 129
2°. Particular and General Interdicts 130
III. Origin and Development of Interdict 132
1°. Origin 132
2°. Development 133
IV. Who Has Power to Impose Interdicts 135
V. Effects of Interdicts. (Can. 2270–2277.) 137
1°. General Local Interdicts 137
2°. Particular Local Interdicts 138

PAGE
3°. General Personal Interdicts 139
4°. Particular Personal Interdicts 140
5°. Interdict from "Entry to the Church" 141
6°. Partial Mixed Interdicts 141
7°. Application of the Foregoing Rules 142
8°. Cessation from Divine Services 142

ARTICLE III

SUSPENSION 143
I. Nature of Suspension 143
II. Origin and Development of Suspension 144
1°. Origin 144
2°. Development of the Discipline 145
III. Species of Suspensions 146
IV. Effects of Suspension 148
1°. General Principles 148
2°. Suspension from Office 149
3°. Suspension from Benefice 150
4°. General Suspension 151

TITLE IX

VINDICTIVE PENALTIES 152
General Principles 152
1°. Nature 152
2°. Appeal from Vindictive Penalties Has Ordinarily a Suspensive Effect and Not a Merely Devolutive One, as Is Frequently the Case with Recourse from Censures. (Can. 2243.) . . 152
3°. Execution of Vindictive Penalties 152
4°. Release from Vindictive Penalties 153

CHAPTER I

COMMON VINDICTIVE PENALTIES 154
I. List of Principal Ones 154
II. Of Some Penalties in Particular 156
1°. The Penal Transfer or Suppression of an Episcopal See 156
2°. Infamy 156
3°. Disability 157
4°. Pecuniary Fines 158

CHAPTER II

VINDICTIVE PENALTIES SPECIAL TO ECCLESIASTICS. (Can. 2298.) 159
I. Enumeration of These Penalties 159

PAGE
II. Of Some Punishments in Particular 160
1°. Privation of Office, Benefice, or Dignity. (Can. 2299.) 160
2°. Prohibition to Wear the Ecclesiastical Dress. (Can. 2300.) 161
3°. Prohibition or Command to Reside in a Specified Place. (Can. 2301–2302.) 161
4°. Deposition. (Can. 2303.) 163
5°. Degradation. (Can. 2305.) 165

TITLE X

Penal Remedies and Penances 169

Chapter I

PENAL REMEDIES 169
I. General Notions 169
II. Admonition and Correction. (Can. 2307–2309.) . 172
1°. Nature 172
2°. Object 172
3°. Form 172
III. The Precept or Injunction. (Can. 2310.) . . . 173
1°. Its Nature 173
2°. Conditions 174
3°. Form 174
IV. Surveillance. (Can. 2311.) 175

Chapter II

PENANCES 176

PART III

PENALTIES FOR INDIVIDUAL DELINQUENCIES

PRELIMINARY REMARKS 178
1°. Object of this Third Part 178
2°. Its Importance 178
3°. Divisions 180
4°. Interpretation 181

TITLE XI

Delinquencies Against Faith and Against the Unity of the Church 182
I. Apostasy, Heresy, Schism 182
1°. Nature 183

PAGE
2°. Former Discipline 185
3°. Present Law vs Const. *Apost. Sedis* . . . 190
4°. Penalties Now in Force Against Apostates, Heretics, Schismatics 193
5°. Remission of These Penalties 193
II. Suspicion of Heresy 197
III. Cooperation in Heresy 198
IV. Teaching Condemned Doctrines 199
V. Publishing, Defending, Reading Certain Books Without Required Authorization . . . 201
1°. Object 202
2°. Penalties 203
VI. Favoring Heresy 205

TITLE XII

DELINQUENCIES AGAINST RELIGION 209
I. Profanation of the Sacred Species 209
II. Saying Mass Twice in the Day or After Breaking the Fast 211
III. Simulation of Priestly Powers 213
IV. Blasphemy and Perjury 215
1. Blasphemy 215
1°. Notion and Species 215
2°. Punishment 215
2. Perjury 216
V. Violation of Laws Regarding Mass Stipends . . 217
VI. Superstition and Sacrilege 219
VII. Spreading False Relics 221
VIII. Traffic in Indulgences 223
IX. Violation of Corpses or Graves 225
X. Violation of Church or Cemetery 227

TITLE XIII

DELINQUENCIES AGAINST ECCLESIASTICAL AUTHORITIES, PERSONS, OR THINGS 228
I. Delinquencies Committed in Papal Elections . . 228
II. Disobedience to or Conspiracy Against Ecclesiastical Authority 229
1°. Simple Disobedience 230
2°. Conspiracy 230
III. Appeal from Pope to General Council 231
IV. Recourse to the Civil Authority in Order to Impede the Exercise of Ecclesiastical Jurisdiction 234
V. Interference with the Liberty, Rights, and Jurisdiction of the Church 236

PAGE
VI. Affiliation with Masonic or Similar Societies . 239
1°. Former Legislation 239
2°. Present Law 240
3°. Special Penalties 242
4°. Absolution of Masons or Other Such Delinquents 242
VII. Inciting the People to Prevent Exercise of Ecclesiastical Jurisdiction 244
VIII. Violation and Responsibility for the Violation or Imposition of Censures 245
IX. Violation of Laws Regarding Christian Burial . 251
X. Obduracy in Censures 253
XI. Violation of the *Privilegium Fori* 254
1. Former Discipline 255
2. Present Law 258
XII. Violation of the Religious Enclosure 263
1. The Law of Canonical Enclosure 264
1°. Papal Enclosure 264
2°. Episcopal Enclosure 265
2. Penalties 265
XIII. Violation of the *Privilegium Canonis* 268
1. Origin of the Legislation 270
2. Present Law 270
3. Penalties 271
4. Conditions for Incurring the Penalties . . 272
XIV. Personal Offences Against Church Dignitaries. (Can. 2344.) 273
XV. Encroachment Upon the Rights and Property of the Roman Church 274
XVI. Confiscation and Appropriation of Ecclesiastical Property 276
1°. Purpose of the Law 277
2°. Its Object 278
3°. Penalties 278
4°. By Whom They Are Incurred 279
XVII. Illegitimate Alienation of Ecclesiastical Property 280
1. Law on Alienation of Church Property . . 281
2. Sanctions 283
XVIII. Neglecting to Execute Pious Legacies . . . 285
XIX. Refusing Legitimate Taxes or Contributions . . 286

TITLE XIV

DELINQUENCIES AGAINST LIFE, LIBERTY, PROPERTY, REPUTATION, MORALS 286
I. Abortion and Suicide 286
1°. Abortion 287
2°. Suicide 288

PAGE
II. Duelling 289
1°. Notion 289
2°. Ancient Discipline 290
3°. Present Law 291
III. Interferences with the Freedom of Clerical or Religious Vocation 291
IV. Abduction 293
1°. Notions 294
2°. Former Discipline 294
3°. Present Law 295
V. Crimes Against the Neighbor's Person, Liberty, and Property 296
VI. Bigamy 298
1°. Nature 298
2°. Penalties 298
VII. Various Delinquencies Against Morals . . . 299
1°. Laymen 299
2°. Clerics in Minor Orders 300
3°. Clerics in Major Orders 301

TITLE XV

The Crime Called Falsum, Falsehood 302
I. Forgery of Pontifical Documents 303
II. Obreption or Subreption in Petitions for Rescripts 306
III. Forgery of Other Than Apostolic Documents . . 307
IV. False Charges of Solicitation Against a Confessor 308
1°. Nature of the Delinquency 308
2°. Penalties 309

TITLE XVI

Delinquencies Committed in the Administration or Reception of Orders and of the Other Sacraments 312
I. Administration of the Sacraments to the Unfit or Unworthy 312
II. Administration of Confirmation by a Priest Without Required Faculty 313
III. Absolution Given Without Necessary Jurisdiction 313
IV. Absolution of an Accomplice 315
1°. The Object of the Law and the Conditions for the Delinquency 317
2°. Penalty 318
V. The Crime of Solicitation 319
1. Origin of the Legislation 319
2. Object of the Law 322
3. Penalties 324

PAGE
VI. Violation of the Seal of Confession 325
1°. General Principles 326
2°. Penalties 327
VII. Consecration of a Bishop Without the Apostolic Mandate 328
VIII. Simony in the Administration or Reception of the Sacraments 329
IX. Reception of Orders from One Under Censure . 331
X. Ordination Without the Requisite Dimissorial or Testimonial Letters or Without the Canonical Title 332
XI. Reception of Orders Against Canonical Rules . 335
XII. Marriage Contracted with the Impediment of Mixed Religion 337

TITLE XVII

DELINQUENCIES AGAINST THE SPECIAL OBLIGATIONS OF THE ECCLESIASTICAL AND RELIGIOUS STATE 337
I. Refusal to Take the Examinations Prescribed for the Young Priests 337
II. Persistent Absence from Ecclesiastical Conferences 338
III. Grave Neglect of Rubrics and Ceremonies . . 339
IV. Disregard for Rules on Ecclesiastical Dress . . 340
V. Commercial Trading 341
VI. Violation of the Law of Residence 342
VII. Neglect of Parochial Duties 343
VIII. Carelessness in Keeping the Parochial Books . 346
IX. Neglect of the Duties of Canon Theologian and Penitentiary 347
X. Apostasy from Religion 349
XI. Flight from Religion 351
XII. Fraud Invalidating Religious Profession . . . 352
XIII. Sacrilegious Marriages 353
XIV. Departure from Rules of Community Life . . 356

TITLE XVIII

DELINQUENCIES COMMITTED IN THE CONFERRING, RECEPTION, AND DISMISSAL OF ECCLESIASTICAL DIGNITIES, OFFICES, AND BENEFICES 357
I. Interference with Freedom of Canonical Elections 357
II. Election, Presentation, Nomination of Unworthy Candidates; Irregularities in Elections . 359
III. Simony in Connection with Ecclesiastical Offices, Benefices, or Dignities 360
1°. Nature and Species 360
2°. Object of the Law 361

PAGE
IV. Conferment of Office, Benefice, or Dignity by One Who Has Only the Right of Election, Presentation, or Nomination 361
V. Taking Possession of Office, Benefice, or Ecclesiastical Dignity Before Receiving Confirmation or Investiture 362
VI. Accepting an Office or Benefice Which Is Not Vacant 363
VII. Retention of Two Incompatible Offices or Benefices 364
VIII. Refusal of the Oath Demanded of Cardinals . . 365
IX. Delay in Receiving Episcopal Consecration . . 365
X. Dereliction of Office 366
XI. Resignation of Office or Benefice into the Hands of Laymen 366
XII. Continuation in Office After Privation or Removal 367
XIII. Omission of the Blessing Prescribed for Abbots . 367
XIV. Omission of the Profession of Faith Required on Appointment to Certain Offices 368

TITLE XIX

ABUSE OF ECCLESIASTICAL POWER OR OFFICE 368
I. General Principle 368
II. Subtraction, Destruction, Concealment, or Mutilation of Documents Belonging to the Episcopal Curia 369
III. Unfaithfulness in the Keeping of Diocesan or Parochial Books 370
IV. Attempted Bribery of Officials of the Curia . . 371
V. Exaction of Taxes Not Approved by Law . . . 371
VI. Illegitimate Concession of Dimissorial Letters by the Vicar Capitular 372
VII. Violation of the Rights of the Ordinary in Regard to the Ordination of Religious . . 372
VIII. Admission to the Novitiate or to Religious Profession of a Candidate Without the Required Qualifications or Testimonials . . 373
IX. Illegitimate Use of Religious Dowries and Admission to Novitiate or to Profession Without Notifying the Local Ordinary . . . 374
X. Interference by Religious Superiors with the Canonical Visitation 375
XI. Interference by Superioresses with the Liberty Granted by Law to Religious in the Matter of Confession 376
APPENDIX 379
ALPHABETICAL INDEX 385

INTRODUCTION

1. The need and justification of punitive sanction are contained by direct implication in the correct concept of law itself. A system of law lacking such sanction would prove in practice ineffectual, defeating its own primary purpose of self-enforcement. The Code of the Church, spiritual withal in aim and content, is no exception to this principle. Ecclesiastical lawgivers must be armed with coercive as well as legislative and judiciary powers, for they govern and direct free, rational agents, whose complex nature responds not less promptly to threat and punishment than to the dictate of reason.

Accordingly the Code of canon law has, like any civil code, its department of penal enactments, and defines what punishments will have to be inflicted on the various classes of offenders and under what circumstances.

2. The fundamental principles of penal legislation are found in the natural law itself. Under the Old Dispensation more explicit prescriptions were added by divine positive law, but these were abrogated by the coming of the new order. In the New Testament, although greater stress is laid on love than on fear, instances are not wanting of punishments inflicted by divine or Apostolic authority. (Matt. xviii. 15–18; I Cor. v. 5; I Tim. v. 19; Tit. iii. 10–11.)

The Bishops and Councils of the early Church deal in like manner with the abuses that occurred in their time, and their decrees are found here and there in the first canonical collections. An attempt at gathering together those which concerned ecclesiastical offences and public penances was made in the third century by St. Gregory of Neocaesarea; and another, a little later, by St. Basil. Ordinarily the arrangement followed chronological sequence without method or system. Even in Gratian's Decree, although some effort is made to group together the penal enactments, we do not find anything like a distinct criminal code after the model of Justinian's.

It was Bernard of Pavia, in the twelfth century, who first classified the Decretals under the five headings indicated in the well known verse: *judex, judicium, clerus, conubia, crimen.* This division was adopted generally, in subsequent collections, and especially in those which make up the *Corpus Juris.* The fifth book, in these collections, *Crimen,* contains the legislation dealing with delinquencies and criminal procedures, and forms a real penal code, one quite different, however, in many respects from modern types.

The study and knowledge of ecclesiastical penal law was thereby much facilitated; but the development kept going on and new provisions were being added to the old. After the close of the *Corpus Juris,* these had to be looked for in the Constitutions of Popes, among the Decrees of the Council of Trent, in the *Bullaria,* in the *Acta* of the Roman Congregations.

At the same time some of the early enactments became abrogated by custom and many of the former penalties fell into disuse. There resulted a great uncertainty and confusion, rendering the need of reform and codification particularly urgent in this department of canon law.

The need was partially satisfied by the Constitution *Apostolicae Sedis* (Oct. 12, 1869) and the publication of a complete official list of the censures *latae sententiae* to be thereafter in force. A similar work remained to be done for the rest of the penal legislation of the Church. It was felt, besides, that an authoritative statement of the general principles of penal law would be of much service, especially to judges and ecclesiastical courts. All this we have in the fifth book of the New Code.

3. The whole penal legislation of the Church is therein divided into three parts: I — Delinquencies in general; II — Penalties; III — Special Delinquencies and their respective penalties.

The rules to be followed in criminal procedures are, more naturally, included in the fourth book, on Trials, in accordance with the plan commonly adopted in modern Codes.

PENAL LEGISLATION IN THE NEW CODE OF CANON LAW

Part I

OF DELINQUENCIES

(F. X. Wernz, S.J., Jus Decretalium; Tom. VI, Jus Poenale Ecclesiae Catholicae, Prati, 1913; Card. Lega, Praelectiones de Judiciis Ecclesiasticis, Tom. III, IV; D'Annibale, Summula Theologiae Moralis, vol. I; Ad. Tanquerey, S.S., Theologia Moralis Fundamentalis, De Actibus Humanis; Tournai, 1906; Bouquillon, Theologia Moralis Fundamentalis, Tractatus Quartus, 1903.)

1. Three general questions are treated here: (1) The nature and different kinds of delinquencies or crimes; (2) The various degrees of imputability; (3) Attempted crime.

This portion of the Church's codified law is, in a sense, almost entirely new. While the ancient canonical texts contained implicitly a theory of delinquency and imputability, it was nowhere expounded in a complete and explicit manner. Canonists assembled its principles from a multitude of disconnected canons and developed it scientifically, sometimes borrowing material and method from the Roman law and the Roman jurists. Moralists discuss it in detail, from a somewhat different point of view, chiefly in the treatises on Human Acts and Morality. Now, however, for the first time the legislator himself formulates it in a technical, systematic manner. An official value is thus given to a doctrine which might seem to have rested heretofore largely upon the authority of private writers; some controversies are authoritatively settled; the uncertainty which existed on a few points is removed; firm and definite rules supersede vague and inadequate ones.

Title I

NATURE OF DELINQUENCY AND ITS DIVISIONS

I. NATURE OF DELINQUENCIES

2. By a delinquency or offence, in Latin *delictum,* as distinguished from *crimen, culpa,* is meant, in canon law, an external and morally imputable violation of the law, to which is attached some canonical sanction, at least an indeterminate one.

(*a*) Every delinquency is a sin, as it implies a violation of the law; but every sin is not a delinquency in the canonical sense of the term. A delinquency is punishable in the external forum. Now the Church punishes only external, somewhat grave offences which, being contrary not only to the moral but also to the social order, can cause serious detriment to the common good.

(*b*) The violation of the law must have all the conditions of knowledge and freedom to be morally imputable; for the Church does not intend to punish one who is not really guilty or a deed for which one is not responsible. What is called a *culpa juridica,* a merely juridical fault, like the involuntary omission of some measure of prudence which should have been taken, suffices for a *quasi-delictum* but not for a delinquency proper. The moral guilt, however, frequently is and has to be presumed in *foro externo,* although it may not really exist. Society can pronounce only on what falls under human observation and the moral guilt depends principally on internal dispositions.

3. (*c*) The law of which a delinquency is the violation, ordinarily is an ecclesiastical law; the Church punishes also the violation of a divine law if it redounds to the detriment of the ecclesiastical society; otherwise, the punishment is left to God Himself.

The violation of a precept has, generally, the same effects as that of a law and what is said of one applies also to the other, unless the contrary be clear from the context or the circumstances of the case. (Can. 2195.)

(*d*) A sufficient evidence that a given offence possesses all the requisites for a delinquency is found in the fact that some canonical penalty is attached to it, even if the law does not specify what the penalty will exactly consist in. On the other hand, an act which is not declared punishable by law cannot be considered as a delinquency properly so called.

II. MALICE AND GRAVITY OF DELINQUENCIES

4. Canonists distinguish in delinquencies the quality and the quantity, or, as moralists more commonly say, the specific malice and the gravity. Heresy differs in quality or specifically from simony although they may be equal in quantity or equally grave. Two sacrilegious acts have the same specific malice but they may differ in gravity. These distinctions have their importance in the application of penalties. A punishment pronounced against a certain offence does not fall on another of a different quality or one specifically different even should the latter be graver than the former; and two offences of the same quality should not be punished with the same severity when they have not the same gravity.

5. The quality or specific malice of delinquencies is to be judged, according to St. Thomas, from their formal object; according to Scotus, from the virtues to which they are opposed; according to Vasquez, from the object of the law of which they are a violation. The legislator here adopts the rule as formulated by Vasquez, which does not differ substantially from the other two. Thus, heresy and sacrilege differ in quality or specifically because they are against precepts having formally distinct objects. (Tanquerey, n. 487; Wernz, n. 27.)

The quantity or gravity of a delinquency is measured by the importance of the law violated, its more or less close relation to the common good, its necessity for the preservation of the social order, the actual consequences of its violation. Thus heresy is a very serious offence because it undermines the very foundations of religion. This is the objective gravity. The subjective gravity depends on the degree of responsibility of the offender, on the knowledge, deliberation and freedom with which the action was performed by him. (St. Thomas, IIa IIae, q. 20, a. 3; q. 94, a. 3; Lehmkuhl, Theologia Moralis, I n. 1223; Tanquerey, n. 474.)

III. VARIOUS KINDS OF DELINQUENCIES

6. 1°. *Occult, Public, Notorious.* (Can. 2197.) Delinquencies are always external acts, but they may be unknown or known in various degrees; hence the division into occult, public and notorious.

(*a*) They are occult, in the full and strictest sense, when they are known to no one but the agent. They are also considered as practically unknown and occult when they are known to only two or three prudent and discreet persons who are not likely to divulge them. They are occult materially, when the fact itself is unknown; formally, when the fact being known, its disorderly character is not.

(*b*) Delinquencies are public when they already are or, in all probability, will soon be divulged. To how many persons they should be known to be considered as divulged, is not defined by law nor can it easily be, as so much depends on circumstances and the character of the witnesses. St. Alphonsus holds that a crime may still remain occult although it be known to five or six persons, or even seven or eight in a large city. In another place he goes farther and demands for a crime to become truly public, that it be known to the greater part of the town, the neighborhood or the community. (Lib. vii, n. 76.) This is not, however, the ordinary sense of public as distinct from notorious. (D'Annibale, i, n. 242, note 49; Gasparri, Tractatus Canonicus de Matrimonio, n. 252, Paris, 1891; Tractatus Canonicus de Sacra Ordinatione, n. 222.)

(*c*) Delinquencies may be notorious by notoriety of law or by notoriety of fact. They are legally notorious after a valid judicial sentence which has become final, that is, from which there is no appeal; and after a confession made in court, in presence of the judge, with all the formalities required to give it a judicial character.

They are notorious in fact on two conditions: that they be publicly known, that is, known to the whole community, morally speaking, or to a large portion of it; and that they have been committed under such circumstances that they cannot be concealed by any subterfuge, nor excused by any interpretation of the law. They are generally known both materially and formally. (Wernz, n. 17, v; Il Monitore Ecclesiastico, Ap., 1918, p. 123.) Homicide committed in presence of a crowd would be a notorious fact, but if it had some appearance of being in self-defence, it would not be a notorious crime; or it would be notorious materially, not formally.

7. 2°. *Ecclesiastical, Civil, Mixed delinquencies.* (Can. 2198.) Delinquencies may be subject to punishment by the ecclesiastical or by the civil authority or by both; hence they are ecclesiastical, civil or mixed.

(*a*) All violations of merely ecclesiastical laws come, by their very nature, under the jurisdiction of the ecclesiastical courts exclusively. The Church may, however, if it is deemed necessary or expedient, request the assistance of the secular power, particularly when, as frequently happens, disregard for Church laws indirectly affects the social order.

(*b*) It is the province of the civil courts to punish violations of purely civil laws, except when the offender enjoys exemption by reason of his character, as decreed in canon 120 on the Privilege of Court for ecclesiastics. Moreover, as civil offences are sometimes also moral disorders and sins, the Church is competent to judge them as such and to pronounce punishment upon them.

(*c*) Offences which violate the law of both Church and State may be punished by both authorities.

8. 3°. *Other Divisions.* Canonists distinguish also crimes of common law and crimes or delinquencies against special law, such as the law concerning clerics, regulars, pastors; crimes which are only attempted and those which are consummated; public crimes which any one may prosecute and private crimes which the injured party alone is supposed to prosecute. There is generally little application of this last division in modern Codes.

Title II

IMPUTABILITY OF DELINQUENCIES; CAUSES WHICH INCREASE OR DIMINISH IT; COOPERATION IN DELINQUENCIES; JURIDICAL EFFECTS OF DELINQUENCIES.

I. IMPUTABILITY OF DELINQUENCIES

9. 1°. A delinquent may be responsible for his actions in different manners and in various degrees: he may have acted through malice or through ignorance or through carelessness. Thus a man might have committed murder intentionally and deliberately; or he might cause another's death by administering a medicine the effects of which he does not know, or by neglecting to take certain precautions which would have prevented a fatal accident. The degree of responsibility or imputability will depend on the degree of malice or of culpability in ignorance or neglect. Whatever, therefore, increases, diminishes or takes away the malice or culpability, also increases, diminishes or takes away responsibility or imputability. (Can. 2199.)

2°. By malice is here understood the deliberate intention or will or determination of violating the law. This supposes knowledge and freedom; ignorance or error, violence or fear, diminish or take away entirely deliberation or freedom, consequently they also diminish or take away malice.

In the external forum, when a law has been violated, it is supposed to have been violated knowingly and deliberately, that is, through malice, unless the contrary be proved. (Can. 2200.)

Whether the conditions for imputability can be really fulfilled by a moral body and, therefore, a punishment strictly so called inflicted upon it, is a controverted question among canonists, which the law leaves undecided. (Wernz, n. 18; Lega, De Delictis et Poenis, n. 50.)

II. CAUSES WHICH TAKE AWAY OR DIMINISH IMPUTABILITY

10. 1°. *Want of the use of reason.* As rational knowledge is an essential condition for moral freedom, without it there can be no responsibility. Hence:

(*a*) No delinquency is imputable to a person who is not actually enjoying the use of reason. When must a man be considered as not enjoying the use of reason is left by the Church to the prudent appreciation of the judge to decide. Modern theories of criminality, those particularly which are based on a materialistic conception of human nature, will be of little assistance in the solution of the problem, if they are not indeed misleading. (Lega, Praelectiones de Judiciis, vol. iii, n. 29.) When moral certainty cannot be attained, the benefit of the doubt is given to the defendant.

(*b*) Persons habitually insane, although they may have lucid moments from time to time or appear perfectly sane on other points, are presumed incapable of delinquencies. One in whom is found such a radical defect as is manifested by habitual insanity, is not likely to be fully normal at any time or in any course of action. This, however, is only a presumption and if it were proven that such a person had the full use of his faculties at the moment the law was violated, he would be held responsible for it.

11. (*c*) Delinquencies committed in a state of drunkenness may be imputable entirely or only partially or not imputable at all.

If the drunkenness was voluntary, the delinquent is responsible for it and, therefore, also for the delinquency consequent upon it; not as completely, however, as if he had acted with the full use of his senses, unless the intoxication had been sought deliberately for the purpose of committing the offence or of having an excuse for it.

If the drunkenness was involuntary, due to some accidental cause, it takes away responsibility or diminishes it, according as the person was deprived entirely or only partially of the use of reason. The same principle applies to all mental disturbances of a similar nature.

(*d*) Weakness of mind lessens responsibility but does not take it away altogether. How much responsibility is lessened and how far an offence may remain imputable in such cases, will again be for the judge prudently to decide.

12. 2°. *Ignorance.* Ignorance means absence of knowledge; error implies, besides, something more positive, *viz.,* a false judgment, but, in regard to imputability, the effects of ignorance and of error are the same, as also those of inadvertence. Canonists distinguish ignorance of law, of fact and of penalty. A person may not know, for example, that it is forbidden by the law of the Church to enter the enclosure in a monastery, or he may not know that he is within the enclosure, or that such an offence is punished with excommunication.

Again, ignorance may be involuntary and inculpable, or voluntary and culpable; and if culpable it may be lightly or gravely so, according as it is due to light or grave negligence.

(*a*) Ignorance of fact excuses from all responsibility whenever it is inculpable. According to the ancient rule, "*Ignorantia facti non juris excusat*" (R. I. 13, in Sexto), ignorance of law would not excuse, but this is interpreted as having reference not to the internal but to the external forum and to mean that ignorance of law is not presumed and not accepted as an excuse, in open court, unless it be proved. The present canon (2202) explicitly states that, "the violation of a law which was not known is not imputed if the ignorance was inculpable."

(*b*) Culpable ignorance, whether of law or of fact, does not take away responsibility altogether but lessens it in various measures, according to the degree of the culpability. Ignorance due to a slight negligence would be considered, in penal matters, as practically inculpable. If due to grave negligence, it would not excuse from grave fault, although it diminishes the responsibility. Some canonists would distinguish between the ignorance which is gravely culpable and the one which is very gravely culpable or, as they call it, crass and supine. The latter would not take away imputability but the former would. (Pirhing, Lib. v. tit. 39, n. 46.) More commonly, however, it is admitted that the responsibility remains when the ignorance is gravely sinful, but that it is lessened according to the gravity of the negligence to which the ignorance is due; and this seems to be clearly the meaning of the present law. (Suarez, De Censuris, disp. iv, s, 10.)

(*c*) Ignorance of only the penalty somewhat diminishes imputability without taking it away altogether. Thus Catholics who marry before a non-Catholic minister knowing that this is forbidden, but not knowing that it is forbidden under pain of excommunication, are nevertheless guilty and for that reason liable to punishment. They may not, because of their ignorance, incur censures supposing an obstinacy which does not exist in their case, but a punishment proportioned to their guilt may be imposed upon them. (Wernz, n. 21.)

It is said that they are somewhat less guilty, because knowledge of the penalty would have made them realize more fully the gravity of the offence. In some cases it might even happen that one would be led to look upon a law as not imposing a grave obligation since there is no sanction attached to its violation. Thus ignorance of the penalty might amount to ignorance of the law or of its importance and take away imputability altogether.

13. 3°. *Neglect of proper diligence.* (Can. 2203.) The violation of a law, due to the omission of proper diligence, is voluntary in its cause, the negligence, not in itself. It supposes not malice, *dolus,* but fault, *culpa,* and is called by canonists a quasi-delinquency. It is imputable in the degree in which it is voluntary and culpable. For we are responsible, at least in some measure, for the consequences of our actions, and the law which directly forbids acts contrary to its prescriptions, indirectly forbids also omissions which may have the same results.

(*a*) If the violation of the law or the evil effects is due to the neglect of precautions which every prudent man would have used and which were known to be necessary, the fault amounts almost to malice and the responsibility is almost as complete as in a case of delinquency proper. A man who would leave a violent explosive in a place where he knows it is liable to cause serious accidents, would be almost as fully responsible for the deaths which follow from his negligence as if he had committed deliberate murder.

(*b*) A violation of the law due to a negligence which, although not intentional at the time, could and should have been avoided, remains imputable but in a lesser degree. When must it be said that it could and should have been avoided, how grave was the obligation to avoid it, and consequently how great is the responsibility, are questions for the judge to decide in each individual case according to circumstances. He will have to take into account the importance of the law which was violated, the seriousness of the evils following therefrom, the special obligation the delinquent may have been under of preventing them, etc.

(*c*) A merely accidental violation of the law, that is, one which could not be foreseen or if foreseen could not be avoided, is not imputable in any degree. In such cases there is neither malice nor fault, and, in canon law, there is no punishment without some guilt, at least presumed. (Wernz, n. 24.)

14. 4°. *Age.* According to canon law, persons under seven years of age are called infants; under twelve for girls and fourteen for boys they are impuberes; under twenty-one they are minors; at the completion of the twenty-first year they are of major age. (Can. 88.)

Infants are not considered as sufficiently capable of deliberation and freedom to be legally responsible for their actions and subject to ecclesiastical penalties.

Regularly the laws of the Church are not binding upon them. Some ancient canonists assimilated all impuberes to infants in penal matters. Others distinguished between those who were nearer infancy and those who were nearer puberty; or again between the sins of omission and the sins of commission. The present law (can. 2204) simply states that "minor age, unless the contrary be clear, lessens imputability, in proportion as it approaches infancy."

15. 5°. *Violence, Fear, Necessity.* (Can. 2205.) Violence is defined as the using of force to compel another to perform an action against his will; and fear, as a perturbation of the mind due to present or future danger. By necessity may be understood here any circumstance which places a man in the alternative either of not complying with the law or of suffering some serious inconvenience from his obedience.

(*a*) If violence is absolute, that is, if a man is compelled by a force which he cannot resist, to act against his will, there is no freedom and therefore no responsibility; if the force could be resisted, although not without difficulty, responsibility is diminished but not taken away altogether.

(*b*) Fear which would so perturb the mind as to render all deliberation impossible, would take away all liberty and consequently all responsibility. Ordinarily under the influence of fear, even grave fear, whether absolute or relative, there remains sufficient self-control for deliberation and free determination, but the freedom is impaired and the imputability diminished. These are cases also in which the law may cease to be binding.

16. (*c*) When circumstances are such that the law cannot be observed without facing danger absolutely or relatively grave, or having to suffer some serious disadvantage, ordinarily, if it is merely an ecclesiastical law, it will cease to be binding, and violation of its prescriptions will not be a delinquency. The principle then applies: *Lex non obligat cum tanto incommodo.*

The case would be different if it were question of the natural law and if the act to be performed were intrinsically evil, or would amount to contempt of faith or of ecclesiastical authority, or would turn to the detriment of souls. Fear of danger then or a serious hardship would not excuse from the obligation of observing the law. Its violation, under such circumstances would remain an offence, only the imputability would be diminished.

The necessity of protecting oneself against an unjust aggressor is a circumstance in which even the natural obligation to respect another's body and life is suspended, as far as is necessary for self-defence. It is not permissible to go beyond what is reasonably required for self-protection; but should there be any excess, the guilt incurred thereby would be lessened, as it is in any case of provocation.

17. 6°. *Passion.* (Can. 2206.) By passion, in general, is meant any movement of the sensitive appetite toward its proper object. Often the word is used in a more restricted sense as denoting an inclination to evil.

Passion is said to be antecedent when it precedes any action of the will and so is involuntary; it is called consequent and voluntary when it is deliberately excited and fostered, or at least willed in its cause.

The effect of passion is to trouble the intellect so as to prevent the due consideration of the motives of action; and to impel the will so as to interfere with self-determination. Thus passion may diminish or even destroy moral freedom and therefore responsibility.

(*a*) Consequent or voluntary passion rather increases guilt and imputability. A man who purposely excites his anger and resentment that he may more surely and more severely injure his enemy, acts with a malice and deliberation which call for the full penalty.

(*b*) Antecedent or involuntary passion, as an obstacle to full deliberation and free determination, diminishes imputability in various degrees, according to the nature and violence of the passion and also of the power of resistance on the part of the agent.

Responsibility may even be destroyed altogether if the mind is so obscured that deliberation is practically impossible, or the impulse of passion so strong that it is, morally speaking, irresistible.

18. 7°. *Personal dignity and responsibility.* (Can. 2207.) Among other circumstances which may affect the gravity and imputability of a delinquency three are mentioned here:

(*a*) The dignity or character of the person against whom the delinquency is committed. The higher he stands in the hierarchy or the greater the respect due to him, the greater also the offence. Thus to lay violent hands on a cleric or Religious is punished with excommunication reserved only to the Ordinary; laying violent hands on a Bishop or Cardinal would be punished with an excommunication reserved to the Pope in a special manner; if the same crime were committed against the Sovereign Pontiff the excommunication would be reserved to the Pope in a most special manner. (Can. 2343.)

(*b*) *Dignity of the delinquent.* The special position which a person occupies in Christian society may impose upon him a particularly urgent obligation to obey the law, or increase imputability in case of offence, or add to the gravity of the crime because of scandal given or for some other reason. Thus a cleric who without due permission sues an ecclesiastic before a civil court, incurs suspension from office; against a layman guilty of the same offence there is no definite penalty enacted by law; likewise clerics who join the sect of the Masons are suspended and deprived of office, benefice and dignity, besides incurring the same excommunication as a layman would. (Can. 2336.)

(*c*) *Special responsibility or abuse of authority.* One who abuses the confidence placed in him or who takes advantage of a position of trust to violate the law, deserves a proportionately greater punishment. Thus canon 2406 enacts that if persons whose office it is to keep the parochial or diocesan books, falsify, destroy or hide them, they are to be deprived of their office and otherwise punished by the Ordinary. Confessors who would abuse their office to lead souls into sin are threatened with most rigorous sanctions. (Can. 2368.)

19. 8°. *Relapse.* (Can. 2208.) There may be relapse into a delinquency of the same or of a different kind.

(*a*) A *recidivus,* in the strict legal sense, is one who, after being condemned for a certain offence, falls into it again and under such circumstances that obstinacy in evil intention may legitimately be conjectured. The circumstance of time deserves in such cases special consideration. Relapse after a long interval of perseverance in good dispositions would not have the same meaning as if the second fall had come immediately after the condemnation for the first offence.

To such relapses Roman law applied the full penalty and refused the forgiveness which was often granted to a first offence.

Canon law has always treated the circumstances of relapse as one manifesting a dangerous disposition and greater malice, calling consequently for a severer punishment and more energetic repression. This is also the view generally taken by civil courts and modern criminologists. (De la récidive, Ivernés, Paris, 1874.) Relapse into heresy was treated as almost constituting a new species of crime. (C. 9, 13, x, v, 7; c. 4, 8, v, 2, in Sexto.)

(*b*) To lapse into a delinquency of a different species does not so readily indicate obduracy in evil, nor is it calculated to form the dangerous habits which are to be feared from the relapse strictly so called. Still it ordinarily manifests little respect for the law and therefore more malice; it betrays the presence of inclinations which, unless checked, might lead to further and more serious disorders. For these reasons it is considered as a circumstance increasing the guilt and justifying severer punishment. (C. 43, c. xxiii, q. 5; c. 2, x, v, 27; c, 2, x, v, 34.)

III. COOPERATION IN DELINQUENCIES (Can. 2209.)

(Lega: De Judiciis Ecclesiasticis, T. III, n. 39 sq.; Wernz, n. 40.)

20. 1°. *Nature and various forms of cooperation.* Cooperation implies concurrence of several causes in the production of the same effect. This may take place in various ways:

(*a*) Some crimes require by their very nature the intervention of several persons, for example, simony, adultery, etc. Strictly speaking this is not so much a case of cooperation as one of a crime common to two equally principal causes.

(*b*) Cooperation proper may be physical or moral. One cooperates physically in an action when he takes part in the action itself; morally, when he induces or contributes to induce the agent to perform the action.

Moral cooperation may take the form of a command, mandate, counsel, provocation or instigation. It is by command, when one having authority gives orders to another to act. The cooperator by mandate or commission is the one in whose name the action is performed. One cooperates by counsel, encouragement, provocation, instigation, threats, etc., when by those various means he induces another to act. If the counsel is supported by arguments, or if instructions are added as to the manner of proceeding, we have what is called an efficacious or cooperative counsel.

(*c*) Under another aspect cooperation is positive or negative. Positive cooperation implies some influence, moral or physical, mediate or immediate, on the action. Negative cooperation consists in failure to prevent the action. This is not cooperation proper, since there is no real "operation" but rather the absence of it. Responsibility is here entailed only in as far as the person who failed to prevent the action was juridically bound to prevent it; in which case he may be punished, not so much as a cooperator, as one guilty of neglect of duty.

(*d*) Canonists and the legislator himself sometimes assimilate to cooperators the *fautores criminis* those who favor crime, who conceal, defend, or protect criminals, approve or praise them.

If the approval, protection, etc., are given or promised before the crime is committed or whilst it continues, they constitute a real encouragement and a moral cooperation; but what is done after the crime is consummated cannot be a cooperation properly so called. It may, however, be punished as a disorder in itself.

21. 2°. *Imputability in cooperation.* (*a*) Each cooperator in a crime is responsible for it and therefore liable to punishment on condition, however, that his cooperation was efficacious and formal. The crime must have been really committed and not simply planned; the cooperators must have really contributed to its commission and intended to do so, for without malicious intention there is no responsibility.

(*b*) Each cooperator is, moreover, responsible for the whole crime; for though there are several criminals the crime remains objectively one and the guilt is not divided among the various cooperators; neither is the penalty.

All cooperators are not, however, equally guilty and there may be a difference in the punishment.

This seems to have been admitted by the Roman law.

22. 3°. *Former legislation.* In Decretal law we find particular decisions but no general theory defining the relative guilt of the various classes of cooperators. In some cases the punishment is the same for all, in others it varies. (6, x, v, 30; 2, 4, 6, x, v, 12.)

In modern times the special attention given to questions of criminology, the tendency to separate more strictly the legislative from the judicial power and to leave to the latter as little discretionary authority as possible, lead to a more scientific, although not altogether complete, nor always satisfactory, determination of the different degrees of responsibility and imputability in cooperation.

By a similar process of development, canonical jurisprudence came gradually to have some fixed general rules on this matter.

A distinction was made between principal and secondary cooperators. The principal cooperators were pronounced as guilty as the principal cause and liable to the same punishment. As to the secondary cooperators, according to some canonists they did not incur the penalties which are *latae sententiae* but they incurred those which are *ferendae sententiae,* with some mitigation, however, in favor of cooperators whose action was not a necessary condition for the crime.

Other canonists rejected that distinction between the penalties *latae* and *ferendae sententiae* as without legal foundation and unreasonable.

There was, moreover, some difference of opinion as to the definition of principal and secondary cooperators. Some canonists called principal only those who take part in the criminal action itself with criminal intent. Others applied the term to all cooperators who are the real cause, physical or moral, of the crime; and they considered as secondary those who help only to facilitate the crime which would be committed without their intervention.

23. 4°. *Present legislation.* The present law settles those controversies and lays down precise rules for the various forms of cooperation.

(*a*) In physical cooperation, all who take part in the same criminal action with the same criminal intent are equally guilty and equally responsible for the results of their common action. If, however, there were special circumstances affecting exclusively one of the cooperators, his guilt might be increased or diminished thereby. In homicide, if one of the action would have a special character of malice; in theft, if one, to secure the end intended, uses a certain means and thus causes a damage which was not part of the common scheme, he alone is responsible for it.

(*b*) In those offences which of their nature require an accomplice, the two parties are considered as equally guilty, unless, again, particular circumstances demand that a difference be made between them. Thus, of the two parties to a simoniacal contract one might be more guilty than the other if he were under special obligation to prevent such abuses.

(*c*) The same principle applies to several of the cooperators who do not immediately take part in the execution of the crime.

First among them is the *mandans,* the person in whose name the crime is committed and who is, for that reason, its principal author. Then come those who have efficaciously counselled the deed or have given such active assistance that without it the action would not have been performed.

All these, who might be called principal cooperators, are pronounced as guilty, everything else being equal, as the principal agent who executed the crime; consequently they are liable to the same punishment.

24. (*d*) Cooperation which is only useful and neither necessary nor really efficacious, in that sense that the deed would have been consummated without it, entails a lighter responsibility.

(*e*) Cooperators who withdraw in due time whatever influence they had on the determination of another to commit an evil deed, are free from all responsibility, even though the person they had thus influenced perseveres in his determination and carries out his resolution for reasons of his own. If the influence was withdrawn only partially, the responsibility would be only lessened.

A command or mandate can easily be withdrawn; it is more difficult to destroy the effect of a counsel strengthened by arguments or accompanied by information which facilitates the deed or even renders it possible.

(*f*) Those who have cooperated in an evil action in a merely negative manner are responsible for it only in the measure in which they were bound by their office to prevent it.

(*g*) Approving a criminal action, sharing in the spoils, concealing the offender, and all such actions performed after the crime is already consummated, may constitute new delinquencies in themselves, if there are penalties enacted against them by law; but they do not constitute cooperation in the crime nor render one responsible for it unless the support or encouragement had been promised beforehand and, in that sense, preceded the evil deed.

IV. JURIDICAL EFFECTS OF DELINQUENCIES

(Can. 2210–2211.)

25. 1°. Delinquencies give rise to a penal action or suit for the punishment of the delinquent and to a civil action for the reparation of damages.

(*a*) When there is a penalty determined by law and to be incurred *ipso facto*, by the mere commission of the crime, only a declaratory sentence is required. If the law determines no special penalty, or if it is one *ferendae sententiae,* the judge pronounces or applies it. He also imposes on the culprit the satisfaction which may be due to the offended party, the community, etc.

(*b*) Should any losses have been caused to any one, the delinquent, besides undergoing punishment, has to make reparation for the injury done, as far as it is possible. Some losses cannot be repaired completely; for others there is no reparation in the strict sense of the term, as for the loss of health, of limb, of life. All that can be demanded in such cases is a compensation as nearly equivalent to the injury as can be estimated and procured.

The rules for both the criminal and civil trials are found in canons 1552–1959. The same judge who is competent in the criminal action may, at the request of the injured party, take up and pronounce sentence in the civil action.

26. 2°. In cases of cooperation the obligation of making the necessary reparation is divided by the judge between the cooperators, but each one of those who have taken a positive, efficacious part in the criminal action, that is, who are cooperators in the full sense of canon 2209, §§ 1–3, is held, in *solidum,* for all damages and expenses; consequently, if some of the cooperators do not fulfil their obligation, the others have to make up for it.

Title III

ATTEMPTED DELINQUENCIES

I. NATURE AND VARIOUS FORMS (Can. 2212.)

27. 1°. *Nature.* Attempt implies effort to do something but without success. It may also be an omission intended to have a certain effect.

A delinquency, or crime, is not said to be attempted by the mere fact that it has been resolved upon, or planned, or prepared for; there must have been at least a beginning of execution. And as the execution ordinarily consists of a series of acts it may be more or less advanced or incomplete. The agent may have carried out his whole plan or most of it or only a small portion of it.

Canonists give the following example to serve as an illustration: Titius threatens his enemy, Osius, with death; here is the criminal intention externally manifested. With this in view he buys a sword; this is the preparation, not the execution, as the sword might be secured for other purposes. He breaks into Osius' house at night when he knows he is alone and without protection; this is the beginning of execution, yet only the beginning. If Titius stops here, his is only a remote attempt. He strikes to kill, but Osius evades the stroke; this is the proximate, complete, although fruitless attempt. Intentionally and subjectively the crime is consummated but objectively it is not. (D'Annibale, i, n. 298; Wernz, n. 32.)

28. 2°. *Various forms and degrees of criminal attempts.* (*a*) If all that was necessary to secure success has been done and failure is due exclusively to some cause independent of the will of the delinquent, we have a complete attempt, which canonists call a frustrated delinquency.

(*b*) When the criminal intention has not been fully carried out because the agent changed his mind in the course of execution or because the means used proved insufficient we have a simple, ordinary attempt, which may be remote or proximate, in the manner suggested above.

(*c*) The action of a man who has tried, without success, to induce another to commit a certain crime, although technically not a criminal attempt, implies similar malice and responsibility.

(*d*) Certain acts may be in the nature of mere attempts when considered in relation to other delinquencies, and constitute a distinct, consummated delinquency in themselves. To break into another's house at night for the purpose of stealing is an attempted theft and also an offence complete in itself, for which there may be, in law, a special penalty.

(*e*) Likewise there is more than a mere attempt in such acts as absolution given by a confessor to his accomplice, marriage contracted by a cleric in Sacred Orders, etc., which the Church forbids and at the same time declares or supposes invalid. As they produce no effect, they are, at time, spoken of as attempted absolutions, attempted marriages; in reality they are consummated delinquencies, because what the Church forbids and intends to punish is the fact of going through the ceremony of marriage, of absolution with malicious intention; it is the naturally complete, not the juridically valid, act.

II. IMPUTABILITY AND PUNISHMENT OF ATTEMPTED DELINQUENCIES (Can. 2213.)

29. 1°. *Former legislation.* The ancient legal texts contain no explicit, complete theory either of the imputability of attempted as distinct from consummated delinquencies, or of the relative punishment due to them.

The Roman law was hardly more definite on the subject. According to some jurists the punishment should have been the same for attempted as for consummated crimes. According to others no penalty was to be inflicted on any crime unless it was complete of its kind. Others again distinguished between public and private crimes. The latter were not imputable unless complete; in the former the attempt sufficed.

Following the Roman law in the sense of its more lenient provisions or interpretation and influenced by the principle commonly admitted in the Church that "in penal matters the milder course is to be adopted," many canonists concluded that the penalty attached to a crime was not incurred if the crime was not in every respect complete and had not produced its effect when the effect was an integral part of the offence. (D'Annibale, n. 298.) Others admitted this only with some qualification. Whilst granting that the special penalty attached to a specified delinquency was not incurred by the mere attempt, they refused to let the criminal go free for the sole reason that he had failed in his efforts, and maintained that in such cases it was left to the discretion of the judge to determine the punishment that should be inflicted, if none is determined by the law.

30. 2°. *Present Law.* Without introducing any provisions really new, it gives official sanction and greater precision to a doctrine which had the support of modern canonists generally. (Wernz, n. 33.)

Attempted crime is considered as truly imputable and punishable although in a lesser degree than if it were consummated. The imputability varies according to the nature of the attempt and the punishment is ordinarily left to the prudence of the judge.

(*a*) The culpability is greatest and the punishment should be severest in the case of frustrated crime.

(*b*) A merely attempted as distinct from frustrated crime is imputable to a lesser or greater degree in proportion to the lesser or greater proximity to the completion of the crime.

(*c*) A person who of his own accord desists from carrying out a crime already in way of execution, is free from all imputability, provided no injury was caused to any one and no scandal given. This refers evidently to legal and penal, not to moral imputability or guilt, which may be very grave.

31. (*d*) The principle that actions which, although mere attempts in themselves, have been directly forbidden by law are fully imputable and punishable, has always been admitted by canonists and is clearly implied in several texts of the *Corpus Juris.* (C. 3, x, v, 25.)

(*e*) As said before, actions forbidden by law and at the same time declared or (supposed) presumed to be invalid, may be complete delinquencies and punishable as such, although they produce no effect, provided they possess all the elements naturally essential to them. Should any of these be wanting, the action is not the one which the legislator had in view and there is not even an attempted delinquency. Canonists give as an example of this a cleric in Sacred Orders contracting marriage with a person who is incapable of a human act. There is no marriage in any sense and no penalty incurred. (Suarez, De Legibus, Lib. v, cap. xxxiv, n. 14; Sanchez, De Matrimonio, Lib. iii, Disputatio ii, n. 2, 5; D'Annibale, l. c.)

Would the same be true if the act, naturally valid, was canonically null, but for a reason different from the one for which it is punished by the Church? Some canonists answer in the affirmative and admit that a deacon, for example, would incur no excommunication if he went through the marriage ceremony without the required witnesses, because the act would be null for want of the prescribed form and not simply because of the impediment of Sacred Orders, which is the reason of the censure. This is not, however, the common teaching. (Suarez, l.c. n. 10; Sanchez, l.c. n. 7, 8; St. Alphonsus, Lib. vii, n. 171; can. 2388.)

Part II

PENALTIES

SECTION I

PENALTIES IN GENERAL

EXISTENCE AND USE OF THE COERCIVE POWER IN THE CHURCH (Can. 2214.)

32. "It is the innate and proper right of the Church, independently of any human authority, to chastise her delinquent subjects, with penalties both spiritual and temporal."

This right the Church possesses by her very constitution, having received it from her Divine Founder. It is independent of the civil authority both in its origin and its exercise. It extends to temporal punishments also and is not limited to spiritual ones, or to mere moral coercion, as some, even among Catholic writers, have maintained. The word "temporal," used here, no doubt, designedly, as in the Encyclical *Quanta Cura,* could not be interpreted as synonymous with external. (Cavagnis, Institutiones Juris Publici Ecclesiastici, cap. II, art. vi; Choupin, Valeur des Décisions Doctrinales et Disciplinaires du Saint-Siége, p. 214, Paris, 1907; E. Vacandard, L'Inquisition, chap. x, Paris, 1917; Etudes de Critique, 2e série p. 217.)

In the exercise of coercive power Bishops and other Ordinaries were warned by the Council of Trent (Sess. xiii, de Ref., c. l.) to use great moderation, remembering that they are fathers rather than judges, that exhortation is more effective than threats, and charity than severity. They should have recourse to penal measures only when persuasion or reproaches have failed, and even then they should proceed with mercy, benevolence, without harshness or undue rigor; so that those who are corrected be converted or at least that others be deterred from imitating them.

The Code renews these admonitions, as authoritatively defining the spirit in which penal legislation should be interpreted and applied in the Church.

TITLE IV

NATURE, SPECIES, INTERPRETATION AND APPLICATION OF PENALTIES

I. NATURE OF ECCLESIASTICAL PENALTIES
(Can. 2215.)

33. An ecclesiastical penalty is the privation of some good, inflicted by legitimate authority for the correction and punishment of a delinquency.

It is the privation of some good, and, in that sense, an evil, something negative rather than positive. Its essential and ultimate purpose is to protect and preserve the social order in the Church. Its immediate end, which ordinarily serves also as a means for obtaining the ultimate one, is to correct the delinquent, to bring him back to the path of duty; to cause him to make reparation for his offence and restore the order violated; to remove the scandal and prevent others from imitating the bad example given. (J. Stremler, Traité des peines ecclésiastiques, chap. ii; D'Annibale, vol. i, n. 300; Wernz, n. 71.)

II. DIFFERENT KINDS OF ECCLESIASTICAL PENALTIES (Can. 2216–2217.)

34. 1°. *Division of ecclesiastical penalties.* The Code divides penalties into three classes: (*a*) Medicinal punishments or censures, whose primary purpose is the correction of the delinquent, *e.g.,* excommunication.

(*b*) Punitive or vindictive penalties, such as degradation and deposition, which have for their chief object the chastisement of the offender, the upholding of the social order and generally the common good, without excluding the good of the individual, which is never lost sight of in the ecclesiastical courts.

(*c*) Penal remedies and penances which are imposed as substitutes for graver punishments as explained in Title X.

35. 2°. *Various ways in which penalties are inflicted or incurred.* (*a*) The precise nature of the penalty may be specified in law or precept, as when it is enacted that any one joining the Masonic sect is excommunicated. The penalty is said then to be *determined.* Or the penalty may be undetermined in law and left to the prudent decision of the judge; and this may be in obligative or facultative terms; that is, the judge may be left free to punish the delinquent or not, according to circumstances; or he may have to punish him, but the determination of the punishment is left to his appreciation. Thus a cleric in minor orders who offends against the sixth commandment, ought to be punished according to the gravity of his offence, on which the judge will pronounce. (Can. 2358.) A person guilty of obreption or subreption in a petition for favor addressed to the Holy See or to the Ordinary, may be punished. (Can. 2361.) In this last case the punishment is left to the prudent judgment of the superior in facultative terms.

(*b*) A penalty may be attached to a law or precept in such a manner that the mere fact of violating the law or precept suffices to incur it. It is then *latae sententiae.* It will be *ferendae sententiae* if it has to be imposed by the judge or superior. A declaratory, not condemnatory, sentence is also required sometimes for the execution of a penalty *latae sententiae,* as will be said later.

Penalties are considered as *latae sententiae,* when it is so declared explicitly in the law; or when it is said that they are incurred *ipso jure, eo ipso, ipso facto;* or when this is implied in the wording of the canon which uses expressions referring to the present, *excommunicamus, suspendimus.*

A punishment which is to be inflicted by intervention of the superior, or is expressed in words referring to the future, *deponatur, ab Ordinario puniatur, etc.,* must be considered as *ferendae sententiae.*

In case of doubt punishments are presumed to be *ferendae sententiae,* or even whenever the contrary is not expressly stated. (Wernz, n. 62, 63.)

(*c*) Penalties are said to be *a jure* when, whether *latae* or *ferendae sententiae,* they are determined and enacted by law, universal or particular, or by a general precept. (Wernz, n. 146, note 16.)

They are termed *ab homine,* when, although prescribed by law, they are inflicted through particular precept of the superior or condemnatory sentence of the judge. Hence a penalty *ferendae sententiae,* attached to a law, is *a jure* before the condemnatory sentence has been pronounced; and both *a jure* and *ab homine,* but considered as *ab homine,* after the sentence.

Penalties *a jure* can apply only to future delinquencies; penal laws have no retroactive effect; but the judge or superior may inflict punishment on past offences.

Penalties *ab homine* which have not yet been even partially inflicted, cease with the extinction of the superior's jurisdiction who was to inflict them; penalties *a jure* partake of the perpetuity of law.

III. APPLICATION OF PENALTIES (Can. 2218.)

36. 1°. *Punishments must be in due proportion to the delinquency.* For this, account ought to be taken of the fault itself, of the scandal that may have been given or the injury caused. In the fault itself several elements also have to be considered:

(*a*) The objective element, the nature and gravity of the law that was violated.

(*b*) The subjective element; the age, instruction, education, sex, state of mind of the delinquent.

(*c*) The circumstances which may increase or lessen imputability; the dignity of the person against whom the crime is committed or of the person who commits it, the purpose of the action, the time and place in which it is performed; the influence of passion or grave fear by which the offender may have been affected, the regret he may have manifested for this misdeed and the efforts he, in consequence, made to prevent its evil results; and other similar circumstances.

2°. The penalties of the Church always suppose a grave offence; whatever circumstances, then, excuse from grave imputability or from all imputability, excuse likewise from all punishment. This holds also in the external forum, if the reality of the excuse can be proved.

3°. Mutual injury is admitted as a compensation. If two parties have caused some damage to one another, neither is entitled to a reparation. In case, however, one would have done a notably greater injury to the other than he has himself suffered, he should be punished, but more leniently, provided the nature of the penalty to be inflicted admits of mitigation.

IV. INTERPRETATION OF PENALTIES (Can. 2219.)

37. 1°. Punishments are considered as odious, in canon law, and in penal matters the principles hold good "*Odia restringi convenit*"; and "*in poenis benignior est interpretatio facienda.*" When the meaning of the law is quite clear it ought to be understood in its natural sense and applied accordingly by the judge. But if it admits of several interpretations the milder one ought to be followed in penal matters, provided it be reasonable.

2°. Punishments ought to be interpreted strictly and not extended beyond what the legislator states expressly.

The Roman law admitted, even in penal matters, the principle of legal and juridical analogy, which permits the extension to all similar offences of a sanction formally decreed for one of them. Some ancient canonical texts had been understood by a few commentators to accept the same principle for ecclesiastical courts; but generally it was not found in harmony with the spirit of the Church's legislation. (C. 6, x, v, 40; Suarez, Lib. vi, c. 3, n. 5; c. 4, n. 3; D'Annibale, i, 304; Wernz, n. 67.) It is explicitly rejected by the present law. (Can. 2219, § 3.)

Penalties are not to be extended from person to person, nor from case to case, although there be the same reason or even a greater one. Thus when the faithful are mentioned, in a penal measure, the clergy are not included; and vice versa the faithful are not included in the clergy, nor, probably, the higher members of the hierarchy, Bishops, Cardinals, and the Regulars with solemn vows. (A. Tanquerey, De Censuris, n. 27.)

Title V

SUPERIORS HAVING COERCIVE POWER

Coercive power is exercised in the enactment of penalties by the legislator and their application by the judge.

I. ENACTMENT OF PENALTIES (Can. 2220.)

Penalties may be decreed by way of law or precept, or as sanctions added to already existing laws, or as particular punishments imposed after the commission of the offence.

38. 1°. *Penal laws and precepts.* (*a*) All superiors who can enact laws and precepts can also attach penalties to them. This power is possessed by the Pope for the whole Church, by the Bishops for their dioceses, and by all other Ordinaries and prelates having episcopal or quasi-episcopal jurisdiction.

(*b*) The Vicar-General is usually included in the name of Ordinary, but this is one of the exceptions. It is explicitly provided here that he has no power to inflict penalties without a special mandate.

(*c*) Pastors have no ordinary jurisdiction in the external forum and can therefore only impose sacramental penances, not canonical punishments. Judges, as such, have only authority to apply the penalties legitimately established and in the manner prescribed by law.

39. 2°. *Penal sanctions.* If no penal sanction has been provided for the law at the moment of its promulgation, one may be added afterward as circumstances demand. This may be done by the legislator himself or his successor; it may be done also, in the case of a divine or higher ecclesiastical law, by any superior possessing legislative authority, within the limits of his jurisdiction. Thus a Bishop may, in his diocese, decree special punishments against the crime of blasphemy, sacrilege, simony, or against violations of the precept of annual confession or paschal communion. Such a measure, however, should be called for by peculiar conditions, *e.g.,* an extraordinary frequency of offences, danger of greater abuses. For similar reasons the existing penalties might be increased. (Can. 2221.)

Ordinaries are expressly warned not to attach a censure reserved to themselves to an offence punished already with a censure reserved to the Holy See. (Can. 2247.)

40. 3°. *Particular punishments.* Regularly punishments are not inflicted without previous admonition of some sort. The offender must know that when he violates a law he incurs some penalty whether *ferendae* or *latae sententiae.* There are some exceptions to this rule.

(*a*) If the offence has been committed with circumstances giving it a character of exceptional gravity, or if great scandal results from it, the legitimate superior may punish the delinquent even though the law contains no threat of punishment.

(*b*) Chastisement is not inflicted till the crime has been proved with moral certainty, nor after liability to punishment has lapsed by prescription; but in both of these cases, should the defendant be a cleric, it would be the right and even the duty of the ecclesiastical superior to refuse him promotion, until he cleared himself of the accusation and proved his worthiness; to avoid scandal it might be necessary to prevent him from exercising the Orders received, and even to deprive him of his office. This, however, is not a real punishment but only a prudential measure demanded by the common good.

II. APPLICATION OF PENALTIES (Can. 2223–2225.)

41. 1°. The mission of the judge is to apply, not to make or amend laws; still in ecclesiastical courts much is left to his prudence and discretion.

(*a*) He is not supposed to be more lenient and especially not more severe than the legislator. Whilst nothing is said of mitigating, it is explicitly declared that he is not to increase the penalty fixed by law unless there be extraordinary aggravating circumstances which render it necessary. This additional severity must not only be expedient or justifiable but necessary, and the circumstances which may make it so are called extraordinary. They will exist then only by way of rare exception.

(*b*) When the penalty attached by the law to the delinquency under consideration is one *ferendae sententiae* and expressed in facultative terms, it is left to the prudence and conscience of the judge to inflict it or not; and if the penalty is specified, to mitigate it. He must, as far as possible, conform to the spirit of the law and the intention of the legislator and have a valid reason for the course he adopts, for it is said that the decision is left, not to his wish or caprice, but to his prudence and conscience.

42. (*c*) If the penalty *ferendae sententiae* is expressed in obligative terms, ordinarily it is to be inflicted, but even in this case something is left to the conscience and prudence of the judge or superior. (i) He is permitted to defer the punishment to a more opportune time if he foresees that a hasty punishment of the delinquent would cause greater evil. (ii) He may even abstain from inflicting the penalty altogether, if the offender has shown complete amendment and made reparation for the scandal given; or if he has been or is to be sufficiently punished by the civil authority. (iii) He may also mitigate the punishment specified by law, or use in its stead one of the penal remedies or penances, if there are circumstances present which diminish imputability in a notable degree. The same would hold when, although the culprit had been punished by the civil court or had reformed, the judge or superior would deem it advisable to impose some light punishment.

(*d*) When the penalty incurred by the delinquent is one *latae sententiae,* the intervention of the judge is not in itself necessary and there is no need of condemnatory sentence in any case, but the judge may issue a declaratory one if he thinks it expedient. He ought to do so when the party concerned asks for it or when the common good demands it. Thus it may be important for the community to be informed officially that a certain person is under ecclesiastical censure or has lost his office.

43. 2°. *Number of punishments.* The general rule is that ordinarily there are as many punishments as there are delinquencies.

(*a*) The delinquent may be guilty of several criminal actions or by one action he may have violated several laws or the same law in several ways. There will be as many delinquencies as there are morally distinct transgressions of the same law or of distinct laws. (Suarez, De Censuris, d. v, s. iii, n. 3–7.)

If by one act several laws have been violated, as, for example, by giving Christian burial to an excommunicated person during time of interdict, there are several delinquencies and the penalty attached to each one of them is incurred by that single act.

If the criminal act is a violation of only one law but injures several persons, as one wounding several clerics, the penalty is probably incurred only once; the crime is considered as a unit.

When several acts are morally connected, as, for example, all those which simply combine to prepare the way for a principal one, they constitute practically only one crime and the principal one alone is punished, unless there be a special penalty decreed against each one of the others because of their particular malice. (Wernz, n. 58; Suarez, l.c. n. 13.)

(*b*) Regularly each penalty thus incurred should be inflicted by the judge, but the delinquencies might happen to be so numerous that if the rule were applied strictly it would savor of cruelty and, whilst in conformity with the letter, would be contrary to the spirit of the law. Here again it is left to the prudent decision of the judge, either to inflict only one of the penalties incurred, the graver one, adding, if the case permits some penance or penal remedy; or he may be satisfied with such of the penalties incurred as will seem reasonable, considering the number and gravity of the delinquencies to be punished.

(*c*) If the law threatens with the same penalty the attempt at and the commission of a crime, the penalty is incurred only once, whether the crime be only attempted or consummated, unless there be a moral interruption between the two acts and really two attempts, one unsuccessful, the other successful.

44. 3°. *Manner of proceeding.* When a punishment is pronounced by judicial sentence, condemnatory or declaratory, the formalities prescribed by law for such sentences ought to be observed.

If the penalty, whether *latae* or *ferendae sententiae,* had been enacted by way of particular precept, ordinarily it should be inflicted or declared in writing or at least in presence of two witnesses, and the reasons for it stated. There must be a legal proof of the action of the superior, and the inferior has the right to know the reasons for his punishment, that he may see whether there is ground for appeal or recourse. Canon 2193 excepts in this regard sentences of suspension *ex informata conscientia,* the reasons for which a Bishop is not obliged to make known to the cleric concerned.

TITLE VI

THE PERSONS WHO ARE SUBJECT TO THE COERCIVE POWER

I. WHO MAY INCUR ECCLESIASTICAL PENALTIES?

45. 1°. *In general.* (Can. 2226.) All persons who have been baptized, laymen as well as clerics, are amenable to the coercive power of the Church, if they become delinquent in the canonical sense by the commission of any of the crimes which are considered as ecclesiastical either in their object or by reason of their authors' character. There is no exception made and no distinction of rank or dignity.

It is provided only that the three classes of persons who, according to canon 1557, § 1, are judged by the Sovereign Pontiff alone, can likewise be punished only by him, whether by condemnatory or declaratory sentence. These are the supreme heads of nations and their children; the Cardinals, the Legates of the Holy See, and, in criminal matters, Bishops, even titular Bishops.

46. 2°. *In particular.* To be subject to a particular penalty one must: (*a*) Be bound by the law to which the penalty is attached; that is, all persons who are subject to a law or precept to which a penalty is attached, are subject to the penalty, unless they are explicitly excepted. It is formally declared by the legislator that Cardinals do not incur penalties, even those enacted by the supreme authority, unless they be expressly mentioned. The same is true of Bishops in regard to the penalties of suspension and interdict, *latae sententiae.* This privilege was granted to Bishops and other higher prelates by Innocent IV (c. 4, v, 11, in Sexto) that they might not be prevented too readily from discharging the duties of their office. The exemption is only from interdict and suspension, not from excommunication; and when they are *latae,* not *ferendae sententiae.* (Can. 2227.)

(*b*) The penalty attached to a law is not incurred unless the delinquency be complete of its kind, fulfilling all the conditions implied in the text of the law interpreted in its natural sense. What is the exact offence which the law intends to punish, is to be determined by a close and careful study of its wording in each particular case. As we are in *materia odiosa,* the interpretation ought to be rather strict, without, however, doing violence to the text.

47. (*c*) The law and penalty must still be in force when the offence is committed or punished.

(i) If by the time the delinquency is to be punished the law which was in force at the moment of its commission has been superseded by a new one, the principle, apparently not admitted in Roman law but introduced in ecclesiastical discipline and formally sanctioned in the new Code (can. 2226, § 2) holds that the milder provision is to be applied to the offender. This will be of practical importance in the application of the present law, many provisions of which are more lenient, and a few more severe, than those of the former legislation. A crime committed before the Code came into force should, regularly, be punished now according to the prescriptions of the law of which it was then a violation; it will be so punished if they are more favorable to the culprit. But if they are less favorable the judgment will have to be pronounced according to the present law. (Wernz, n. 68.)

(ii) Should the subsequent law abrogate the former law itself or only the penalty attached to it, the latter will cease at once to be binding, although the law had been violated and the penalty incurred while it was still in force. This, however, does not apply to censures, which continue binding until they are removed by absolution. (Can. 2226.) Thus, under the former legislation simony was punished with inability to obtain any ecclesiastical benefices. (Pius V, Constitution *Cum primum,* § 8; Reiffenstuel, Lib. v, tit. iii, n. 267.) As the penalty is not found in the new law and must consequently be considered as now abrogated wherever it might have still been in force, a person who had incurred it under the old discipline would now be free from it. On the other hand, while those who "receive, favor or defend heretics" do not incur any longer the excommunication specially reserved to the Pope pronounced against heretics, if they committed the offence while the former law was still in force they remain under excommunication until they have been absolved; because excommunication is a censure.

(iii) A penalty does not cease to be in force and the offender does not free himself from it because he goes outside of the jurisdiction of the superior who inflicted it. Whether inflicted by law, general precept, particular precept or judicial sentence, it follows the delinquent wherever he goes, unless the contrary be explicitly stated. Once inflicted, it continues to hold even when the authority of the superior has come to an end. This is true also of penalties *ab homine,* unless they had not gone beyond a mere threat.

II. CAUSES EXCUSING FROM PENALTIES

The principal ones are ignorance, lack of sufficient deliberation, age, and fear.

48. 1°. *Ignorance.* Three kinds of ignorance are distinguished here: affected, crass and supine, ordinary.

(*a*) Many canonists had considered it at least probable that affected ignorance excused from the penalties pronounced against those who "presume," "dare," who act "knowingly," "of set purpose," "rashly," "advisedly"; or when similar expressions are used requiring full knowledge and deliberation, and implying consequently, on the part of the offender, pure malice and contempt for the law. For, they argued, one who affects ignorance of sin shows some respect for the law. (D'Annibale, i, n. 312, note 72; Wernz, n. 158.) Others maintained that affected ignorance is equivalent to full knowledge. (St. Alphonsus, i, 169; vii, 48.)

The present canon, 2229, explicitly declares that affected ignorance, either of law or only of penalty, never excuses from any punishment *latae sententiae,* even in the cases in which most perfect deliberation is required.

(*b*) Crass and supine ignorance of law or only of penalty does not exempt from punishments *latae sententiae* in ordinary cases, that is, when the legislator does not employ those terms which suppose full knowledge. When these terms are used and this condition required, any kind of ignorance and in fact any cause, whether on the part of the intellect or of the will, which diminishes responsibility in any appreciable degree, exempt from penalties *latae sententiae.*

It is not explicitly stated here that crass ignorance does lessen imputability, but this is implied with sufficient clearness and must be admitted, if we understand by it ignorance which, although due to very grave negligence and therefore voluntary in its cause, is not voluntary in itself and for that reason not perfectly voluntary.

49. (*c*) Ignorance which is not crass and supine evidently exempts from all penalties *latae sententiae* in cases in which perfect deliberation is required. In other, that is, in ordinary, cases, it exempts from medicinal not from vindicatory punishments.

The ignorance spoken of here must be one gravely culpable, for all ecclesiastical punishments — and the vindicatory kind cannot be an exception — suppose a grave fault. (Can. 2218, § 2.) The old controversy whether ignorance can be gravely culpable without being crass and supine, is thus indirectly decided here in the affirmative. (Wernz, n. 21, note 79, n. 158, note 71.)

It is expressly provided that when ignorance exempts from medicinal penalties or censures, it does not necessarily free from all punishment. The superior may, if he sees fit, impose upon the offender some suitable penance.

50. 2°. *Lack of deliberation.* Lack of full deliberation, due to intoxication, carelessness, mental weakness, or impulse of passion, will, like ignorance and other causes which lessen imputability, exempt from penalties *latae sententiae,* which suppose perfect freedom, as said before; but in other cases the penalties will be incurred as long as the act, although less fully imputable, remains nevertheless gravely culpable. No difference is made here between medicinal and vindicatory penalties.

51. 3°. *Fear.* Grave fear frequently dispenses from observing ecclesiastical laws; but in the cases in which obedience remains obligatory in spite of serious difficulties or inconveniences, grave fear lessens imputability somewhat but not sufficiently to exempt from the punishment attached to the law which is violated. These are the cases in which disregard for the law would involve contempt of faith or of Church authority, or public spiritual danger.

52. 4°. *Age.* (Can. 2230.) Minors who have not attained the age of puberty are exempted by the Church from all penalties *latae sententiae,* either medicinal or vindicatory. The law does not imply that they are free from all responsibility; as soon as they enjoy the use of reason their acts are imputable to them in various degrees and they may justly be punished for them; but the law recommends that with "impuberes" punishments be employed which may contribute to their training rather than censures or other penal remedies, which would be too severe for their age and would have little efficacy in the correction of their faults.

Persons above the age of puberty who induce these minors to commit an offence, or who cooperate in its commission, are not benefited by the exemption of the principal cause, but must be punished as ordinary cooperators.

III. COOPERATORS AND THE PENALTIES THEY INCUR (Can. 2231.)

53. (*a*) In relation to responsibility, cooperators have been divided into two general classes (can. 2209): those who have full responsibility (§§ 1–3) and those who have only a partial responsibility in an action. (§§ 4–7.) To the first class belong those who agree to concur in the same action by united physical effort; the two parties to an act which of its nature requires an accomplice, like simony; those who command or induce another to perform an action, or assist him in such a manner that without their help the deed would have remained undone. (N. 20, a–c.) The other cooperators belong to the second class. (N. 20, d–g.)

(*b*) Except for special circumstances which would render one party more guilty than another, all the cooperators of the first class are equally responsible for the deed; therefore, unless the law ordains otherwise, they all incur the full penalty enacted against the delinquency committed in common, just as if every one of them was its sole author. This holds also when the law mentions only one delinquent.

The cooperators of the second class do not incur this penalty. Their punishment is left to the prudent judgment of the superior unless it has been determined by law.

IV. WHEN PUNISHMENTS *LATAE SENTENTIAE* TAKE EFFECT (Can. 2232.)

54. 1°. *General principle.* A punishment *latae sententiae* is, by its very definition, one which goes into effect at once or is binding on the offender as soon as he has committed the offence and is conscious of it. No intervention of the judge should be required to pronounce a sentence which has already been uttered by law. In practice the application of this principle in all its rigor has offered serious difficulties, and some judicial decision, not to inflict the punishment but to declare officially that it had been incurred, has proved, in many instances, useful or even necessary.

55. 2°. *Former legislation.* In Decretal law it was implied, although nowhere explicitly enacted, that under certain circumstances the penalties *latae sententiae* themselves would be fully executed only after a declaratory sentence of the superior. What those circumstances should be, was not defined authoritatively; canonists and theologians endeavored to interpret the mind of the legislator, but found it difficult to formulate rules which would be sufficiently precise and satisfactory to all.

Generally they demanded a declaratory sentence in the following cases:

(*a*) For the positive penalties consisting in a fact, such as exile, imprisonment, fines.

(*b*) For negative penalties taking away a right already acquired, like the right to vote in elections, the right of patronage; censures and irregularities were commonly considered as an exception to this rule.

(D'Annibale, n. 309; Lega, n. 73, 74; Wernz, n. 63; Ballerini-Palmieri, Opus Theologicum Morale, vol. vii, n. 7, 8.)

56. (*c*) For penalties which affect, or require the intervention of persons other than the offender, such as loss of jurisdiction by a pastor, exclusion from the divine services.

(*d*) For those which cannot be executed without revealing an occult crime and generally for all penalties which it would be too hard to ask the delinquent to execute upon himself. (Wernz, n. 62.)

(*e*) Even for merely private penalties, which take away, not a right already acquired, but the possibility of acquiring it, some canonists required a declaratory sentence; so that the only penalties which did not demand the superior's intervention would have been censures and irregularities and a few other punishments which it is not possible or customary for judges to inflict, such as fasting, recitation of prayers, exclusion from Christian burial. (D'Annibale, 309, note 47, 50.)

57. 3°. *Present legislation.* The provisions of the present law on this subject are explicit, clear and definite.

(*a*) Penalties *latae sententiae,* whether medicinal or vindicatory are binding on the delinquent in both the internal and external forum as soon as he is conscious of his guilt. He ought, regularly, to observe them without delay and he may be compelled to do so. This, however, admits of one exception and supposes certain conditions.

(*b*) If the delinquent cannot observe the penalty without infamy or loss of his good name, he is not bound to do so until there has been a declaratory sentence against him. This implies that by submitting to the punishment he would reveal an occult offence of a serious character; if it was only to give rise to suspicions, there would be no infamy and the excuse would not hold.

(*c*) Whilst in conscience, in the internal forum, the delinquent is bound to observe the penalty which he is conscious of having incurred, he cannot be compelled to do so unless there has been a declaratory sentence or unless the delinquency be notorious. Here we have the application of the principle that no one is to be punished unless his guilt be certain, and, in the social or public estimate, no guilt is certain unless it either has been so declared by court or is notorious.

58. (*d*) No distinction is made here by the law between positive and privative penalties, or between censure or irregularities and other punishments, as was done by ancient canonists. Hence the obligation, in conscience, to observe penalties before any declaratory sentence when the excuse of danger of infamy does not exist, will apply also to positive penalties and others for which exceptions used to be made. In reality there are at present very few penalties *latae sententiae* of a positive character, and they are not of such a nature that it would be too hard to expect the culprit to execute them upon himself.

On the other hand, to enforce even censures or irregularities in the external forum, notoriety of the guilt is required or a declaratory sentence. Notoriety supposes knowledge by a notable portion of the community. The declaratory sentence, as said before, is pronounced by the superior when he sees fit or upon request of the party concerned, or when the common good demands it. (Can. 2223, § 4.)

(*e*) The declaratory sentence reaches back to the moment when the delinquency was committed. Thus, if the penalty is the loss of benefice, the offender ceases to have a right to its income from the moment he violated the law.

V. WHEN CAN A PENALTY BE INFLICTED?

59. 1°. No penalty can be inflicted unless it be certain that the delinquency was committed and that no legitimate prescription has prevailed against it. (Can. 2233.)

This applies to vindicatory and to corrective penalties, to penalties *ferendae sententiae* and to those that are *latae sententiae,* in the sense that the latter are not incurred unless the offence has certainly been committed and that, when a declaratory sentence is required, it is not pronounced unless the guilt be proved. But the law deals here directly with penalties to be inflicted, not with those already incurred.

60. 2°. To inflict vindicatory or strictly punitive penalties it is sufficient that the conditions just mentioned be fulfilled. But for censures which have a medicinal or corrective purpose, something more is required. They are supposed to be administered only when the offender shows obstinacy. He must therefore be warned first and admonished to amend his ways. If he does, repents sincerely, and makes, or promises to make, reparation for the past, no punishment is inflicted.

(*a*) The admonitions are necessary when inflicting censures, *i.e.,* when one is about to impose a censure by particular sentence upon an offence already committed. For censures enacted against future crimes and to be incurred *ipso facto,* whether they are decreed by general law or by precept, admonitions are not required; a peremptory one is contained in the law itself or in the precept. (Wernz, n. 167; Ballerini, l.c. n. 108.)

Some canonists concluded from this that admonitions would not be needed for any censures *ferendae sententiae* enacted by general law and having reference to future offences; but this view, never commonly accepted, finds no support in the present law, which states, without making any distinctions, that admonitions are obligatory for inflicting censures. In reality censures *ferendae sententiae* are inflicted by particular sentence after the commission of the delinquency. The law contains a general threat of punishment against future delinquents, but the punishment is inflicted only in particular cases by the superior.

Neither is it said or implied by the legislator that admonitions may be dispensed with when the guilt of the delinquent and his contumacy are notorious, as some have held. (Schmalzgruber, Lib. v, tit. xxxix, n. 32.)

Notoriety dispenses from declaratory sentence in a case of penalty *latae sententiae,* but not from admonitions before inflicting a censure *ferendae sententiae.* (Ballerini, l.c. n. 109.)

61. (*b*) Canonists demand three admonitions with an interval of several days between them, although they admit, and this had been also declared officially (c. Const., *de Sententia Excomm.,* in Sexto), that one admonition may be sufficient, particularly if the case is urgent and provided reasonable time be granted to the delinquent for an answer. The present law simply leaves it to the prudence of the judge or superior to decide whether it is expedient to allow time for reflection and how much.

(*c*) According to the common teaching of canonists the admonitions are necessary for the lawfulness, not for the validity of the act; and the new law does not say the contrary. (St. Alphonsus, Lib. vii, n. 58.) Regularly they are to be made by the judge or one delegated by him.

VI. CULPRITS GUILTY OF SEVERAL DELINQUENCIES (Can. 2234.)

62. As said before (can. 2224) the Church does not insist on inflicting as many penalties as there have been offences committed when these are rather numerous. The delinquent must, however, be punished more severely than if he were guilty of only one or some of his delinquencies, and the judge is empowered besides, if he thinks fit, to submit him to surveillance or other penal remedy.

VII. PUNISHMENT OF ATTEMPTED OR FRUSTRATED DELINQUENCY (Can. 2235.)

63. A merely attempted or frustrated offence is not as grave as a consummated delinquency and therefore does not deserve the same punishment. It may however be punished. In a few cases the nature of the penalty may be determined by law; ordinarily it is left to the prudent decision of the judge. He must remember that the imputability is greater in a frustrated than in a merely attempted crime, in a proximate than in a remote attempt. (Can. 2213.)

Title VII

REMISSION OF PENALTIES

(Can. 2236–2240.)

(Suarez, De Legibus, Lib. VI, caput 14; D'Annibale, n. 314; S. B. Smith, Elements of Ecclesiastical Law, vol. III, chapter X; F. Piatus Montensis, Praelectiones Juris Regularis, vol. II, Q. 733. seq.; Wernz, n. 87, seq.)

I. GENERAL NOTIONS

64. Release from ecclesiastical penalties is effected chiefly by dispensation and by absolution.

To relieve a person from a vindicatory penalty, temporary or perpetual, which has not been fully paid, a dispensation or exemption from law is necessary.

Censures, being medicinal penalties, are designed mainly for the correction of the culprit; as soon, therefore, as he amends and recedes from his obstinacy, the penalty should be removed; this is done by absolution.

Dispensation implies favor; its action goes counter to the law and it consequently calls for a just reason and a strict interpretation.

Absolution is rather an act of justice; it operates in accordance with law, and the mere fact of amendment gives one a right to its benefit. Its terms are to be interpreted liberally. Once given it cannot be revoked.

The present title deals with releases from penalties, in general. Special important provisions concerning release from censures are found in the next Section.

II. ORDINARY POWER TO RELEASE FROM PENALTIES

65. 1°. Release from penalties, either by dispensation or by absolution, can be granted only by the person who enacted them or his superior in the matter, or his successor, or one to whom he has given authority for it. (Can. 2236, § 1.) The same principle obtains here as in dispensing from law. To loose and to bind are acts of jurisdiction requiring equal power.

The Sovereign Pontiff can release from all ecclesiastical penalties, whether enacted by himself, his predecessors, general or particular Councils or by individual Bishops. A Bishop cannot release from penalties enacted by the Pope or by Councils, unless the power has been granted him by common law or particular Indults, explicitly or implicitly. The only superior empowered to release from penalties imposed by a Bishop is the Pope or one delegated by him; not, in the present discipline of the Church, the Metropolitan, still less the primate.

These principles apply strictly to penalties which are vindicatory and those *ab homine;* in the case of censures *latae sententiae,* because of their peculiar character, numerous exceptions are made and it has been admitted for centuries that any one having jurisdiction may absolve from them whenever they are not explicitly reserved.

66. 2°. "Any one who can exempt from a law can exempt also from the penalty attached to it." If he possess ordinary power to dispense from the law, he has also power to dispense from the penalty. If he acts by virtue of a delegation, he has been delegated to release from the penalty also.

3°. A judge, whose office it is merely to apply a penalty decreed by a superior, cannot, as a judge, remit it once it has been applied. When he has pronounced the sentence and provided for its execution, he has no further authority in the case and can grant no dispensation or absolution unless he has received special authorization for it.

III. QUASI-ORDINARY POWER OF BISHOPS TO RELEASE FROM PENALTIES

67. By virtue of their office Bishops can practically relieve only from penalties imposed by themselves or by their predecessors; but in order that the need of recurring to Rome may not arise too often more extensive powers have been granted to them by common law.

1°. *Former discipline.* (*a*) In the law itself it was at times explicitly declared that the penalty attached to it could be dispensed from. This clause would naturally be interpreted to mean that a dispensation could be granted by Ordinaries, since there was no doubt that it could be granted by the Pope.

(*b*) The Council of Trent (Sess. xxiv, caput 6, De Reformatione) gave to Bishops faculties to dispense, in the internal forum, from irregularities and suspensions arising from occult crimes, even if they were reserved to the Holy See, with the exception of those arising from voluntary homicide and those brought to court for trial. They were allowed likewise to absolve from occult censures in the internal forum. The Constitution *Apostolicae Sedis* excepted censures reserved to the Pope in a special manner.

68. (*c*) Many canonists maintained that Bishops had also faculties to dispense from punishments incurred because of delinquencies which they called minor, and they thus denominated all those which were not considered as graver than adultery. Their contention was based principally on a Decretal of Pope Alexander III (c. 4, x, ii, 1) and on the difficulty of imposing recourse to Rome in all such cases. (D'Annibale, n. 315; Lega, T. iii, n. 12.) But the distinction between major and minor offences was difficult to make in practice and had little foundation in law.

(*d*) Other canonists even extended the powers of Bishops to all such cases of necessity in which, on the one hand, there would be urgent need of dispensation and, on the other, recourse to the Holy See, if not impossible, would offer serious difficulties or grave inconveniences. Under these circumstances, it was argued, human laws ordinarily cease to be binding and the same principle should apply to punishments. (D'Annibale, n. 315.) To this view it could be objected that no trace of any such concession of power to Ordinaries had been found in official documents, and that whilst the reasoning might seem conclusive in the case of censures or of penalties incurred for occult crimes, it had little force in others when the purpose of penal enactments is to cause inconvenience, even serious inconveniences. (Wernz, n. 91.)

69. 2°. *Present legislation.* A distinction is made between public and occult cases, as in the ancient law.

(A) In public cases.— The Ordinary can release from the penalties *latae sententiae* of the common law, with a few exceptions.

This power is granted to Ordinaries, not exclusively to Bishops; it could not be used for penalties *ferendae sententiae,* nor for penalties enacted by particular law.

It is not stated here, as it is in the second part of the same canon which deals with occult cases, whether the Ordinary can delegate this power. In similar cases, as in the interpretation of the text of the Council of Trent referred to above, some canonists conclude from the silence of the law that the authority to delegate, which usually goes with quasi-ordinary power, is implicitly granted here without restrictions. Others draw the conclusion that the Ordinary is not to act through another, particularly because the legislator, when he intends to give permission to delegate, mentions it explicitly. (Ballerini-Palmieri, l.c. n. 159.)

70. The cases excepted are: (i) Those which have been brought to court for trial. For this it suffices, according to some canonists, that there should have been a judicial denunciation against them; according to others, the trial must have been begun, or if there has been only a denunciation the offender must have received notification of it.

(ii) Censures reserved to the Holy See. It is not necessary that they be reserved in a special manner. Without special faculties, an Ordinary could not, *e.g.*, absolve from the excommunication incurred by joining secret societies, if the fact were publicly known.

(iii) Penalties involving ineligibility to offices, benefices, dignities, functions in the Church, active and passive vote; or the privation of them, legal infamy, privation of the right of patronage, and of any privilege or favor granted by the Holy See.

No special concession is made for the supposed cases of necessity which are public, nor is there any distinction formally introduced between penalties incurred for minor and those incurred for major offences.

(B) In occult cases.— Ordinaries may release from all penalties *latae sententiae* of the common law. Here again this power is granted to Ordinaries, not to Bishops alone, and it is specified besides that they can delegate it absolutely. It does not include penalties *ferendae sententiae,* nor those of particular law; but with these restrictions it extends to all vindicatory punishments and to all medicinal or corrective punishments, excepting only the censures reserved to the Pope in a special or very special manner. And even for these there are ample faculties granted for the cases of urgent necessity or danger of death. (Can. 2254, 2290.)

IV. CONDITIONS FOR REMISSION OF PENALTIES

71. 1°. The person who is to be granted release from penalty, must ordinarily ask for it and show signs of amendment, if he has to be absolved from censures; he must have repaired the scandal or acquired some title to the favor, if he applies for a dispensation.

One may also be absolved without knowing it or consenting to it, even while opposed to it. (St. Alphonsus, Lib. vii, n. 117; Ballerini, l.c. n. 172.) This would be possible in cases in which the absolution is granted principally for the sake of another party and not in any sense as a favor to the one who is absolved, for the Church does not intend to force favors on any one. (D'Annibale, i, n. 223.)

2°. The superior releasing from penalties must, besides possessing the necessary power, act freely. Release extorted by violence or grave fear is, by the very fact, null and void. (Can. 2238.)

(*a*) To have this effect violence and fear must be grave, unjust and used purposely for extorting the release. It is not necessary that it be caused by the party himself seeking release.

(*b*) Error or deceit about the principal reason for release would also render it null. The principal cause for absolution from censure is regularly the amendment of the offender. (St. Alphonsus, l.c. n. 132.)

V. MODE OF RELEASE FROM ECCLESIASTICAL PENALTIES (Can. 2239.)

72. From the nature of the act and by ecclesiastical law remission of penalties may be:

(*a*) Absolute or conditional. Some canonists have maintained that if the condition was *de futuro contingenti,* the remission would be invalid. It is so for the remission of sins in the sacred tribunal; but here we have a judicial decree or decision depending on the will of the superior who can suspend its effect or make it contingent on a future condition, not a sacramental act which can be effective only at the moment the sacrament is administered; suspension may be removed on condition that restitution will be made.

(*b*) Release from penalty may validly be granted to one who is present or to one who is absent. Regularly one should be present to receive absolution or dispensation but this is not necessary for validity; nor even for lawfulness if there be some legitimate reason for proceeding in this manner.

(*c*) Release may also be granted for both the external and the internal, or only for the internal forum. Whenever granted for the external, it holds good in the internal forum also.

(*d*) Penalties may be remitted in writing or orally, or even, according to canonists, by mere signs, as long as they would manifest externally the intention of the superior to absolve or dispense. (Ballerini, l.c. n. 171.) When the penalty has been inflicted by written order it is expedient that release from it be in writing also.

No special form of absolution or dispensation is prescribed. In the tribunal of penance absolution from censures is included in the general form of absolution from sins, and nothing more is required. For private absolution outside of the sacred tribunal the Ritual gives a brief form, and the Pontifical has another for solemn absolution, but neither is necessary for the validity of the act nor strictly for the lawfulness.

VI. PRESCRIPTION OF PENAL ACTIONS (Can. 2240.)

73. The cases which are subject to the jurisdiction of the Holy Office follow the rules and customs special to that Tribunal. (Can. 1555, § 1.) In all other matters, the time for instituting criminal action against a delinquent is limited to three years with the following exceptions: (*a*) an action for injuries expires within one year; (*b*) an action for qualified offences against the sixth and seventh precepts of the Decalogue expires within five years; (*c*) an action for simony and homicide expires only after ten years. (Can. 1703.)

SECTION II

PENALTIES IN PARTICULAR

TITLE VIII

MEDICINAL PENALTIES OR CENSURES

CHAPTER I

CENSURES IN GENERAL

I. NATURE OF CENSURES (Can. 2241.)

74. 1°. *General notion.* The censors, among the ancient Romans, were magistrates whose functions included the keeping of a register of all Roman citizens and the watching over the morals and manners of the people, with absolute power to punish offenders by the imposition of fines and other penalties as severe as degradation from social rank.

The office of censor was called censure, later the term was used to designate the sentences he pronounced or the penalties he inflicted, and finally it came to be applied to all penalties in general.

In the language of the Church it is in this last sense that the word censure was first taken and under it were included such punishments as public penances, excommunication, deposition. Little by little, however, a more restricted meaning was attached to it as, with the progress of the canonical science, particularly in the period of the Decretals, the nature of ecclesiastical penalties was more clearly determined. No formal and complete definition of censure is found in the legal texts, but, in answer to a question as to the meaning of the word in official documents, Innocent III, who, some time before, had used it in its general sense, declared in 1214, that it meant the penalties of Interdict, Suspension and Excommunication. (C. 13, x, ii, 1; c. 20, x, v, 40.) From this and from the various elements they found scattered through the *Corpus Juris* canonists formed the definition which has now passed into the Code. (Wernz, n. 144; The Catholic Encyclopedia, Censure; Dictionnaire de Théologie Catholique, Vacant-Mangenot, Paris, 1905.)

75. 2°. *Definition of Censure.* "A censure is a penalty by which a baptized person, delinquent and contumacious, is deprived of certain goods, spiritual in themselves or annexed to spiritual things, until, having receded from his contumacy, he is absolved."

(*a*) It is a penalty, for it is a privation of some spiritual benefits, inflicted by the legitimate authority because of some delinquency.

(*b*) Like other ecclesiastical penalties, censures are inflicted only on those who, by Baptism have become subject to the authority of the Church; over infidels or unbaptized members of any sect she exercises no jurisdiction according to the saying of St. Paul: "What have I to do to judge them that are without?" (I Cor. v. 12.)

(*c*) Censures suppose delinquencies, for there is no punishment, in canon law, without guilt, and also obstinate persistence in crime, or contumacy. Contumacy is an act of stubborn disobedience to law implying formally or interpretatively contempt of the punishment and of lawful authority. This clearly exists when the delinquent persists in his course after having been duly admonished. Regularly, warning is given before censures are inflicted. It need not, however, be invariably given to the offender personally and individually; it may be a general warning contained in the law itself, as when a censure is attached to it by the legislator, provided the threatened punishment be known.

76. (*d*) Censures consist in privation, not in positive infliction; and in the privation of spiritual not of temporal benefits, except indirectly because of the connection of temporal goods with spiritual things. Thus an ecclesiastic may, by suspension, lose the income of his benefice, as something material, intimately united to and depending on his office, which is spiritual.

Nor do censures deprive of any and all spiritual goods, but only of such as are within the power of the Church and belong to men as members of the Christian society, like ecclesiastical offices, indulgences, the sacraments, public-prayers; they do not deprive of merely internal goods of a more personal character, like sanctifying grace, the sacramental powers received in ordination, private prayers, acquired merit. Censures are punishments of the external forum.

(*e*) The privations inflicted in censures are to last as long as the offender persists in his evil ways, for their purpose is primarily correction and only secondarily chastisement and example for other evildoers. For this reason censures are called correctional or medicinal penalties. They may, however, be imposed on offenders even when there is little or no hope of amendment; the secondary ends may then be attained if not the primary one.

As soon as the delinquent shows signs of sincere conversion, the censure is to be removed by absolution. Suspension and interdict may be inflicted for a fixed period of time, but it is because in such cases they are used as vindictive not as correctional penalties or censures. Excommunication is never used as a vindictive penalty but exclusively as a censure. (Stremler, l.c. p. 249.)

77. 3°. *Gravity and use of these penalties.* Censures are considered by the Church as very severe measures, to be resorted to only when other milder ones have failed. The Council of Trent (Sess. xxv, c. 3) warns Bishops that the sword of censures is to be used with sobriety and great circumspection. The admonition is renewed in the present law which particularly recommends moderation in the infliction of penalties *latae sententiae,* above all of excommunications. Used indiscriminately they would soon become despised and would lose their efficacy.

II. CONDITIONS FOR CONTRACTING CENSURES
(Can. 2242.)

As said before, censures suppose guilt and contumacy.

78. 1°. To be punished with censure a delinquency must be: (*a*) External and not belonging exclusively to the internal forum; but it may be occult and known only to its author. Thus a person who would give a deliberate and formal assent to a heretical proposition, would commit a very grave sin, yet he would not incur the excommunication pronounced against heretics as long as the assent would remain merely internal; but if he manifested it by words, signs, or any other way, even though he would not be heard, seen, or understood by any one, he would fall under the excommunication. In these and other cases of penalties *latae sententiae,* censures are incurred without the knowledge of the superior. He may likewise inflict them upon delinquents whose identity is unknown to him, although he is aware of their delinquency. Thus if some crime had been committed, the author of it might, for special reasons, be summoned to appear and threatened with censure to be incurred *ipso facto* if he obstinately refused to obey.

(*b*) The delinquency must be grave, proportioned to the gravity of the punishment. The penalty of excommunication is pronounced only against very serious disorders.

(*c*) It must be complete or consummated. The penalties enacted against homicide are not incurred if the crime is frustrated or merely attempted and death does not follow. To decide whether this condition is fulfilled in a particular case, it is necessary to determine the exact meaning of the law and the nature of the crime it has in view, then examine whether this is the crime that was committed, remembering that the words of the legislator ought to be interpreted here in their natural yet strict sense.

79. 2°. *Contumacy.* When is the delinquent contumacious, in the legal sense, as is required to incur censures?

(*a*) If the censure to be inflicted is one *ferendae sententiae,* the delinquent must be admonished as prescribed in canon 2233. If in spite of warnings he continues in his sin — for example, retains ecclesiastical property unjustly occupied, remains member of a forbidden society, or refuses to do penance for past offences, to make restitution, to repair scandal given — he is contumacious; externally, whatever may be his inward sentiments, of which the Church is not able to judge, he manifests contempt for the punishment he is threatened with, for the law and for its author.

(*b*) When the censure is one *latae sententiae,* explicitly declaring that the penalty will be incurred by the mere fact of the commission of the offence, this is an official warning and a peremptory one. Whoever violates the law knowing the censure attached to it, shows contempt for the censure and for the law. This, however, supposes that he acts with full knowledge and deliberation, through malice. Ignorance, fear, lack of sufficient discretion would excuse him from sin or take out of it the element of contempt which is required for contumacy. (Can. 2229.)

(*c*) A delinquent "is considered as having receded from his contumacy when he has sincerely repented of the offence committed, made fitting reparation for the injury caused and the scandal given or has seriously promised to do so. It is for the superior from whom absolution is asked, to pronounce on the sincerity of the repentance, the sufficiency of the reparation or the reliability of the promise." (Can. 2242, § 3.)

III. APPEAL FROM OR RECOURSE AGAINST CENSURES (Can. 2243.)

Censures may be already inflicted or they may only be threatened.

80. 1°. *Appeal from censures already inflicted.* They may have been inflicted by judicial sentence or by way of particular precept. There can be no question here of censures *a jure* and *latae sententiae* which have been incurred *ipso facto.* Recourse against them would be recourse against the law itself or the legislator. There might, however, be appeal, even *in suspensivo* according to the common opinion of canonists, from a declaratory sentence stating that the offence punished by law has been really committed and that the censure has been incurred. But the Code deals here with censures inflicted by sentence of court or precept of superior.

(*a*) Censures inflicted by judicial sentence go into effect at once; there is no appeal from them except *in devolutivo.*

(*b*) Against censures inflicted by way of precept there is recourse, but here also it is only *in devolutivo;* the censures must be respected while the case is taken to a higher jurisdiction, until a favorable decision has been obtained.

This applies only to censures. From a sentence of deposition or degradation there might be appeal *in suspensivo,* and also from a sentence or decree of a superior imposing the penalty of suspension for an entirely past offence or for a fixed period of time; in such cases the suspension is a vindicatory not a medicinal penalty.

81. 2°. *Threat of censure.* Judicial sentences or precepts may merely threaten with censure without inflicting it. Thus the judge may declare that an ecclesiastic will be suspended if he does not return to his diocese within a fixed time; the superior may forbid a cleric under pain of suspension even *latae sententiae* to join a certain society.

(*a*) In matters in which the law does not admit of appeal or recourse with suspensive effect, the recourse or appeal would suspend neither the threatened censure nor the sentence or precept; both would have to be obeyed, else the penalty might be inflicted or would be incurred if it was *latae sententiae.*

(*b*) In matters in which the law admits of appeal or recourse, if these are interposed both from the sentence or precept and from the censure, both are suspended; if they are interposed only from the censure, the latter alone is suspended, the sentence or precept continues binding. Examples of cases in which the law does not admit of appeal are found in canon 1880.

Mention is not made here of appeals or recourses *in devolutivo,* because there is no occasion for them as long as the censure is only threatened, not inflicted.

IV. MULTIPLICATION OF CENSURES IN THE SAME SUBJECT (Can. 2244.)

82. 1°. *Possibility of such multiplication.* The same person may fall under several censures of a different and also of the same kind: be suspended and excommunicated; or excommunicated, suspended or interdicted several times.

In regard to censures of the same kind, it has been objected that when a man has, for example, by one excommunication, lost all the benefits that it can take away, he cannot be deprived of them again by another. But in censure there is, together with privation, the bond or obstacle which causes it and which can be multiplied. One may be bound to perform the same duty by several laws; there may be several obstacles to the acquisition of the same good, each one sufficient in itself to prevent the possession of that good until it is removed. (Ballerini, l.c. n. 78.)

83. 2°. *Causes of multiplication of censures.* (*a*) Censures *latae sententiae.*— As many are incurred as there are offences committed or laws violated to which such censures are attached. Several laws may be violated by one single act, like attempt by one in Sacred Orders to contract marriage before a non-Catholic minister. (Can. 2319, 2388.)

Again, a censure is incurred as often as the same specific offence to which a censure has been attached, is repeated so as to constitute a new act, *e.g.,* by laying violent hands on different clerics successively or on the same on several distinct occasions. One who by a single act would wound several ecclesiastics would probably incur the censure only once.

Several censures would also be incurred by the commission, once or several times, of an offence punished with different penalties by distinct superiors, as, when to the penalty of suspension decreed by common law, is added, by particular law, one of excommunication.

If two distinct superiors had attached the same kind of penalty to a certain ordinance, *e.g.,* excommunication, would one, by violating it, incur two excommunications? Canonists generally answer in the affirmative, provided the intention of the superiors is clearly manifested. The present law speaks only of different penalties. (Ballerini, l.c. n. 79; Suarez, De Censuris, disp. 5, sect. 2, n. 13; St. Alphonsus, Lib. vii, n. 28.)

(*b*) Censures *ab homine.*— Several censures may be inflicted upon the same person by several successive precepts or several successive sentences. A judge may, for legitimate reasons, pronounce suspension against a culprit to-day and excommunication or suspension again next month. A precept or censure may also contain several clauses, each one of them inflicting a distinct censure.

V. RESERVATION OF CENSURES (Can. 2245.)

84. 1°. *Nature and existence.* (*a*) The general principle, "*Ilius est solvere cujus est ligare,*" "Only he can loose who can bind," should regularly apply to censures, but their nature as remedial penalties demands that when the delinquent has repented, their end being attained, they be removed without long delay. This, however, would often be very difficult or impossible, if release had to be obtained from the author of the censure, his superior, successor or delegate. Therefore, Innocent III officially authorized excommunicates to go, for absolution, to their Bishop or their priest, whenever the lawgiver had not reserved the absolution to himself. (C. 29, x, v, 39.) The Pontiff spoke here only of minor excommunications enacted by common law; but canonists, with the implicit approval of the legislator, soon extended his concession to all censures. The distinction was thus introduced of censures from which every confessor can absolve and censures which are remitted only by their author or one having the same power.

(*b*) The distinction is maintained in the present law. Censures *ab homine* remain reserved to him who enacted them, to his superior, his successor, or one delegated by him.

Censures *a jure* are not reserved unless it is explicitly stated in the law or precept by which they were enacted. In case of doubt, whether of law or of fact, they are not supposed to be reserved.

85. 2°. *Different kinds of reservations.* Censures may be reserved to the Ordinary or to the Apostolic See. In the latter case they may be simply reserved, reserved in a special manner, or in a very special manner.

(*a*) Censures which are simply reserved to the Apostolic See (i) can be remitted by any one who has received general faculties for papal cases. (Can. 2253, § 3.) (ii) If, in danger of death, a person had been absolved from such a censure by a priest who had no special faculties there would be no need, in case of recovery, to have recourse to the Holy Penitentiary or to the Bishop. (Can. 2252.) (iii) This recourse would be obligatory, had the absolution been given because of urgent necessity (can. 2254), unless moral impossibility would dispense from it. (iv) The Ordinary can absolve, personally or through a delegate, from all these censures when they are occult. (Can. 2237, § 2.)

(*b*) Censures reserved to the Holy See in a special manner (i) Any one who would presume to absolve from such censures without having obtained the necessary faculties, would incur an excommunication simply reserved to the Holy See. (Can. 2338.) (ii) Good faith would, however, excuse, and the absolution thus given would be valid nor would any further formality have to be complied with. (Can. 2247, § 3.) The faculties required are special or explicit faculties; general ones would not suffice, as for absolution from censures simply reserved. (Can. 2253, § 3.)

86. (*c*) Censures reserved to the Holy See in a very special manner. (i) To absolve from them not only a special but a very special authorization is required (can. 2253), under pain of excommunication simply reserved to the Holy See. (Can. 2338.) (ii) When, in danger of death, a person has received absolution from one of the censures reserved in a very special manner from a priest who had no faculties, he is bound after recovery to have recourse to the Sacred Penitentiary or to the Bishop. (Can. 2252.) (iii) When a confessor, through ignorance absolves from a censure without the required faculties, the absolution is valid generally, but not if it is one reserved in a very special manner. (Can. 2247.) (iv) A person who has to be absolved from several censures and fails to mention one of them will have it remitted by a general absolution if he has acted in good faith, provided it be not very specially reserved. (Can. 2249.)

87. 3°. *Restrictions on reservations.* (Can. 2246–2247.) (*a*) Reservations of censures should not be multiplied without serious cause; they should be restricted to the cases in which the special gravity of the offence, the necessity of maintaining more effectively ecclesiastical discipline and protecting the morals of the faithful, make it imperative to have recourse to that measure.

(*b*) Reservation is to be interpreted strictly.

(*c*) The reservation of a censure which prevents the reception of the sacraments, as, for example, excommunication, implies reservation of the sin to which it is attached, because absolution from the sin cannot be received until release from the censure has been obtained. But if, because of ignorance or some other reason, the censure has not been incurred, or if absolution from it has been secured, the sin ceases to be reserved. Likewise, a sin is not reserved when to it is attached a reserved censure which does not prevent the reception of the sacraments. A cleric promoted to orders by simony incurs a suspension reserved to the Holy See, but any confessor may absolve him from the sin he thus commits.

88. (*d*) An Ordinary cannot attach a reserved censure to a delinquency which is already punished with censure reserved to the Holy See. He may add his own censure, but he must not reserve it to the Ordinary.

(*e*) Reservation of a censure in a particular territory is limited to that territory and has no effect outside of it. Thus, if a Bishop had forbidden ecclesiastics, in his diocese, to go to theaters, under pain of suspension reserved to himself, the delinquents might be absolved from it, outside of that diocese by any confessor, as if the censure was not reserved. (Can. 2247 § 2.) This, however, applies only to the censures *a jure,* for the censures *ab homine* follow the delinquent wherever he goes and remain reserved wherever he may be.

(*f*) Should a confessor, not knowing of the reservation, absolve both from the censure and from the sin, the absolution from the censure would be valid, provided it be not one *ab homine* or one reserved to the Holy See in a most special manner. The absolution from the sin in those cases would be valid, in accordance with what has been said before, except when the censure which cannot be absolved validly, would be one of those which prevent the reception of the sacraments and render their administration null.

VI. ABSOLUTION FROM CENSURES (Can. 2248.)

89. 1°. *Necessity, obligation, efficacy.* (*a*) It might seem that since the chief purpose of censures is the correction of the offender, as soon as he repents and makes amends, they should cease of themselves; the principle, however, is that a censure once incurred can be removed only by absolution. It was inflicted by an act of jurisdiction; it requires another act of jurisdiction to take it away. In a well regulated society it must not be left to the culprit himself to decide whether he has made sufficient amends and is entitled again to the benefits which he had lost by his disobedience. Even death would not free him from all the effects of an excommunication or interdict, since they may exclude him from the privilege of a Christian burial.

(*b*) On the other hand, if the repentant one still needs absolution, he has a right to it, as soon as he has shown in the manner prescribed by law (can. 2242, § 3) that he has truly receded from his obstinacy. Absolution from censure is an act of justice, not of mercy. The superior is bound by law to grant it when the required conditions are fulfilled; but he may, if the case demands or permits it, impose upon the one he absolves some punishment or penance.

(*c*) Ordinarily absolution removes censure in an absolute manner so that it does not revive again. Sometimes the absolution is granted *ad reviviscentiam,* as canonists say, or *sub poena reincidentiae.* An obligation is imposed upon the absolved party under pain, in case it would not be fulfilled, of falling again under the same censure. We have two examples of this in the absolution given from reserved censures, without the regularly required faculties, in danger of death or of urgent necessity. (Can. 2252, 2254.) In such cases, it is not so much that the censure revives, but rather that it is inflicted again; and for this reason canonists generally hold that new guilt and contumacy are required to incur it the second time as well as the first. (Ballerini, l. c. n. 191.)

90. 2°. *Absolution from several censures.* (*a*) A man who has incurred several censures may be absolved from one without being absolved from the others. (Can. 2249, § 2.)

A mortal sin cannot be remitted while others remain on the soul; because mortal sin is washed away by the infusion of sanctifying grace, which cannot coexist in a soul with grievous guilt. But there is not the same connection between the different censures, nor between censures and the possession of sanctifying grace. A person may lose, by suspension, the power of jurisdiction without losing the right to exercise the power of orders and vice versa; and likewise one may be restored without the other, that is, one suspension may be taken away without the other. The relation of censure to sanctifying grace is no obstacle to this. For, while every censure supposes a grave sin and therefore the loss of sanctifying grace, censure and grace may exist at the same time in a soul. Thus a person who has incurred an excommunication may by an act of perfect contrition obtain the remission of the sin for which he has been excommunicated and thus regain the state of grace, while he remains under the censure until he has received absolution from one having the necessary faculties. On the contrary, one who commits a sin to which is attached an excommunication *ferendae sententiae,* becomes gravely guilty and loses grace, but he is not excommunicated till the condemnatory sentence is pronounced against him; by that time he may have regained grace by an act of perfect contrition.

Because of this independence of censure from sin and grace, absolution from censure may be given outside of the tribunal of penance, without absolution from sin; or in the sacred tribunal, without the sin being remitted for want of proper dispositions; absolution from one censure can be given without absolution from the others, and absolution from a certain censure can be given as to some effects only.

(*b*) When absolution from several censures is desired, every one of them ought to be mentioned in the petition, otherwise the absolution is good only for those which were mentioned. If, however, the absolution is imparted in general terms, even though the petition had not included all censures, they are all taken away, provided the omissions were made in good faith and the censures omitted are not reserved to the Holy See in a very special manner.

91. 3°. *Absolution from censure and from sin.* (Can. 2250.) Although absolution from censure does not, in itself, depend on absolution from sin, nor remission of sin by perfect contrition on absolution from censure; absolution from sin does, in some cases, depend on absolution from censure.

(*a*) When the censure incurred is one which does not place any obstacle to the reception of the sacraments, like suspension, the censured party, if he is properly disposed and has receded from his contumacy, may be absolved from his sins without being first absolved from the suspension. An ecclesiastic who had been suspended from his office, would not for that reason be forbidden to receive the sacraments like the rest of the faithful; and he might continue deprived of the power of hearing confessions after obtaining the forgiveness of his sins and the grace of absolution.

(*b*) If the censure incurred is one of those which deprive a person of the use of the sacraments, as, for example, excommunication, sacramental absolution from sins can be received only when the censure has been removed and the obstacle thus taken away.

(*c*) Absolution from censures in the tribunal of penance is contained in the usual liturgical form of absolution from sins: "*te absolvo ab omni vinculo excommunicationis, suspensionis et interdicti. . . .*" Outside of the sacred tribunal, no special form is required for releasing from censures any more than from other penalties, but for absolution from excommunication it is recommended to use ordinarily the form given in the Ritual. (Dominus noster Jesus Christus te absolvat: et ego auctoritate ipsius, et sanctissimi Domini nostri Papae (*vel* Reverendissimi Episcopi N., *vel talis* Superioris) mihi commissa, absolvo te a vinculo excommunicationis, in quam incurristi (*vel* incurrisse declaratus [declarata] es); propter tale factum (*vel* causam, *etc.*); et restituo te communioni et unitati fidelium, et sanctis Sacramentis Ecclesiae, in nomine Patris +, et Filii, et Spiritus sancti. Rituale Romanum, tit. iii, c. 3.)

92. 4°. *Absolution in the internal and in the external forum.* (Can. 2251.) (*a*) Censures are punishments of the external forum, depriving of benefits which the Christian possesses as a member of the Christian community rather than as an individual. Consequently, absolution from censures is regularly an act of external administration, giving back the lost advantages of membership in the religious organization.

But there are cases when, on the one hand, because of insufficient reparation or for other reasons, the censured party cannot be readmitted publicly to full participation in the privileges of the faithful, and, on the other, the Church does not wish to deprive him any longer of certain powers or of means of grace which he may urgently need; he is then allowed the private use of these powers or means, without being publicly restored to his former state. He is absolved in the internal not in the external forum.

(*b*) Absolution in the external forum removes all the effects of censures completely. One absolved in the internal forum is really absolved before God, but his absolution is supposed to be unknown; and for the Church or the public it is as if it had not been received. Hence if the censure had remained occult the person thus absolved becomes free from all restriction. If the censure was public or notorious, in the eyes of the community it continues to be binding and should be respected when by acting otherwise scandal is likely to be caused. But if there is no danger of scandal because, for example, it will be presumed that absolution has been obtained, one absolved in *foro interno* may act in the external forum also as if he had obtained full release.

93. (*c*) Superiors may recognize the absolution in the internal forum and consequently permit the reception of the sacraments or the exercise of sacred functions, assistance at the divine services, provided that scandal be avoided; they are not, however, obliged to do so. They have the right to enforce the censure until the reception of absolution is duly established by direct evidence or legitimate presumption. The testimony of the superior who gave absolution in the internal forum could suffice to prove this fact. If the absolution had been given in the tribunal of penance, the confessor could testify to this, but only after securing the proper permission from his penitent. (Ballerini, n. 206–207.) Sometimes it may be necessary to obtain absolution also in the external forum, although not so frequently at the present day.

(*d*) When permission to absolve from censures is granted, it is presumed to hold for the external and the internal forum, unless the contrary be explicitly or implicitly stated. (Can. 202, § 3.)

94. 5°. *Absolution in cases of danger of death.* (Can. 2252.) In danger of death, any priest may validly and lawfully absolve all penitents from all censures, no matter in what manner they are reserved and how public they may be. (Can. 882.)

(*a*) A person thus absolved from censures in danger of death, by a confessor who had no special faculties, is free from any further obligations, if he recovers, except in two cases, namely, when he has been absolved from censures reserved to the Holy See in a very special manner, or from censures *ab homine,* such as those imposed by particular precept or by sentence in an ecclesiastical court.

(*b*) Under pain of falling again under the same censure, the party in question is bound, after recovery, to have recourse, in the first case, to the Sacred Penitentiary, or to the Bishop, or to some one else possessing the necessary faculties; in the second case to the superior who inflicted the censure. The mode, conditions and purpose of this recourse are the same as in cases of urgent necessity. (Can. 2254.) Probably the convalescent is free also, if he chooses, to go to another confessor having faculties for the reserved censures, repeat his confession and receive absolution from him, instead of applying to the superiors mentioned in this canon.

(*c*) There is no obligation of recourse when absolution has been received, in danger of death, from censures *a jure,* reserved to the Ordinary or to the Pope in a special, not very special, manner.

95. 6°. *Absolution outside the case of danger of death or of necessity.* (Can. 2253.) (*a*) Absolution from censures which are not reserved can be given, in the penitential forum, by any confessor; outside of the sacred tribunal, by any superior having jurisdiction over the delinquent in the external forum, as the Bishop, the Vicar-General, the Administrator of the diocese.

Jurisdiction granted for the internal forum can usually be exercised outside of confession, unless its use be restricted explicitly or implicitly to the sacramental forum (can. 202, § 2); and it was the teaching of many canonists that one having power to absolve from censures in the internal forum, could absolve both in the sacramental and the non-sacramental forum (Ballerini, l.c. n. 194), but the present law clearly demands, for absolution outside of sacramental confession, jurisdiction in the external forum. (Can. 2253, § 1.)

(*b*) Absolution from censures *ab homine* can be given by the one to whom the censure is reserved, that is, the one who enacted or inflicted it, his successor, superior or delegate. He can give absolution even if the censured party has transferred his domicile or quasi-domicile elsewhere and ceased to be in other respects his subject.

96. (*c*) Absolution from a censure *a jure,* which is reserved, can be given by the superior who imposed the censure and the one to whom it is reserved, by their successors, their competent superiors, or their delegates.

(i) Absolution from a censure reserved to the Bishop or to the Ordinary, either by common or local law, can be given by any Ordinary to his own subjects; and, also, by the Ordinary of a given place, to *peregrini* or outsiders coming to him in his own diocese. It could evidently be given also by the

Holy See or by a priest delegated either by the Holy See or by an Ordinary.

(ii) Censures reserved to the Apostolic See can be absolved from by the Pope or by any one who has obtained from him general, special, or very special faculties, according as the censure is reserved in a simple, special, or very special manner.

97. 7°. *Absolution from censure in cases of urgent necessity.* (Can. 2254.) The discipline of the Church on this point has varied somewhat in the course of ages and further slight modifications have been introduced into it by the new Code.

(*A*) Former Discipline.— Ancient Papal Constitutions forbid confessors, under severe penalties, to absolve from censures reserved to the Pope, without special authorization. An exception was made for cases of danger of death. The exception was soon extended to cases of necessity by custom, with the implicit and afterward the explicit consent of the legislator himself.

In 1190, Clement III declared officially that women, old people, the sick or invalids could be restored to the communion of the Church by their Bishop without having to appear before the Pope. All others, rich and poor, had to present themselves to the Pope or to his delegates. The sick had to promise under oath to comply with the same formality in the event of recovery. (C. 13, x, v, 39.)

A few years later, in 1212, Innocent III made further concessions and authorized all who were prevented by any just cause, poverty included, from appearing before the Pope, to go for absolution to their Bishop or priest, *proprio sacerdoti.* According to some canonists, penitents were free in such cases to go to the Bishop or to the priest; according to others they were authorized to go to the priest only when they could not go to the Bishop. *Proprius sacerdos* was commonly interpreted as meaning any confessor, although it may not have been the original sense of the words. (D'Annibale, i, n. 348, note 34.)

Boniface VIII confirmed the declarations of his predecessors, adding that those who, after taking advantage of the permission to receive absolution from the Ordinary or confessor, would fail to appear before the representative of the Holy See would fall again under the censure from which they had been released. (C. 22, v, 11, in Sexto.)

98. Did the obligation of appearing before the superior to whom the censure was regularly reserved, continue even when the impossibility of doing so lasted for a long time? The law did not define, and canonists answered the question by making some distinctions and laying down certain rules which, although without formal official sanction, were commonly received for a long while as safe norms of action. (i) Persons prevented for a very long time, *i.e.,* five years or more, from appearing before their legitimate superior were absolved by an inferior and freed from any further obligation. (ii) Persons prevented for over six months and less than five years were absolved but remained bound to appear before the superior as soon as convenient. (iii) Persons prevented for less than six months were allowed in urgent necessity to receive sacramental absolution from their sins but they were not absolved from censures. (A. Lehmkuhl, Theologia Moralis, vol. ii, n. 410.)

These rules were applied by many canonists to episcopal as well as to papal cases; but others held that ordinary confessors could never absolve directly from censures reserved to the Ordinary except in danger of death. (D'Annibale, i, n. 348, note 41–42.)

99. Another question arose, in modern times, with increased facilities of communication and correspondence. A person unable to go to Rome or to the legitimate superior for absolution is not bound to send a substitute, as was commonly admitted. Is he bound to submit his case by letter? No such obligation is mentioned by the Decretals or ancient canonists, but St. Alphonsus and other authors affirmed its existence very explicitly; and their opinion, which had become the much more common one, received the implicit endorsement of the Sacred Penitentiary in a decree of July 8, 1860. (D'Annibale, n. 348.) A little later the contrary opinion was formally declared to be no longer tenable by the Holy Office, in a decree issued June 23, 1886, explained and completed by a series of others. (June 17, 1891; June 16, 1897; June 7, 1899; Nov. 9, 1898; Sept. 5, 1900; Oct. 19, 1900; Dec. 19, 1900.) These decrees mark a change in the discipline.

100. Henceforth, in cases of necessity, when it is impossible or seriously difficult to go to the Pope or to one having faculties to absolve from cases reserved in any manner to the Holy See, the necessary powers should be obtained from the Holy Penitentiary. If this is not possible, then an ordinary confessor can give absolution, but the penitent is bound, under pain of falling again into the same censures, to have recourse to the Holy See, by letter and through the confessor, at least within a month.

The obligation of recourse is grave. It would not suffice to write to the Bishop or his Vicar-General, unless he has faculties for papal cases; an ordinary confessor could not receive this recourse, even if he had habitually delegated powers to absolve from cases reserved to the Holy See. Application must be made to a "superior." (H. O., Dec. 19, 1900.)

This legislation directly concerns papal cases, hence it was concluded that nothing had been changed in regard to cases reserved to Ordinaries. The decree of June 23, 1886, speaks of reserved sins and censures and was understood commonly as not making any distinction between them. (Lehmkuhl, n. 413, ad v; S. Penitentiary, Nov. 7, 1888; Dictionnaire de Théologie Catholique, Censures; Gennari, Consultations, vol. ii, p. 30.)

101. (*B*) Present Legislation.— The present legislation maintains substantially the prescriptions contained in the recent decrees of the Holy Office and will have to be interpreted in the same sense except as to a few points. (Can. 2254.)

I. "In urgent cases, when censures *latae sententiae* cannot be observed exteriorly without serious danger of scandal or of loss of good name; or when it would be hard for the penitent to remain in the state of grave sin till faculties to absolve have been obtained from the competent superior, any confessor can, in the tribunal of penance, absolve from the censures whatever be the manner in which they are reserved; but he must impose upon the penitent, under pain of incurring again the same penalties, the obligation, to have recourse, within one month, to the Sacred Penitentiary, to the Bishop or other superior having faculties and accept the penance imposed; the recourse to be made personally or at least by letter through the confessor without mentioning the name of the party concerned."

(*a*) The law deals here with censures; special provisions for reserved cases are found in canon 900. The rules given apply to censures *latae* not *ferendae sententiae,* but no distinction is made between those which are reserved to the Holy See or to the Ordinary, or between those which are reserved in a simple, special, or very special manner.

102. (*b*) Three causes of urgency are explicitly mentioned as in previous decrees: danger of scandal, danger of losing one's good name and need of sacramental absolution.

A person who has fallen under censure should apply for absolution to the competent superior or have his confessor secure the necessary faculties. But he might not be able to wait the whole time required for this and meanwhile stay away, *e.g.,* from holy communion or abstain from celebrating Mass, without causing scandal, or without giving rise to grave suspicions against himself. Even should no such danger exist, he may have to comply with the precept of annual confession and communion, or it might be hard for him to be deprived so long of the benefit of sacramental absolution and to continue in the state of mortal sin. This supposes that the censure to be removed is one preventing the reception of the sacraments, that the penitent is anxious to be reconciled with God, and that he feels the need of the sacramental grace. The Church readily admits that especially for some persons it may be a serious hardship to remain in sin even for a few days.

103. (*c*) Under the foregoing circumstances any confessor, that is, any priest having power to hear confessions, can absolve, in the tribunal of penance, not outside, from any censure, even if reserved in a most special manner; there is no restriction in the concession.

(*d*) The penitent thus absolved is to be put under the obligation, grave since it is under pain of falling again into the same censures, to have recourse or to submit his case to the competent superior; not in order to be absolved but to receive certain admonitions and mandates which he must be ready to abide by. He may go to the superior personally or write to him; every Catholic has the privilege of presenting his case directly to Rome. It is permitted also to write through the confessor, who should not refuse his cooperation without grave reason. Recourse must not be delayed longer than a month from the day absolution was received, or, as some understand it, from the day this obligation became known.

104. (*e*) If the censure is reserved to the Ordinary, it will suffice to have recourse to him; if it is reserved to the Pope, it is necessary to have recourse to the Sacred Penitentiary or to the Bishop, the Vicar-General, or any other superior, not to an ordinary confessor, provided, as above said, they have authority to absolve from papal cases.

In the letter to the Bishop or to the Sacred Penitentiary, the name of the penitent is not given but the address to which the answer or rescript should be sent ought to be clearly indicated. (Letters to the Sacred Penitentiary may be written in Latin, English, or any other language; they are addressed: Sacra Penitentiaria, Via del S. Officio, Roma.)

The answer of the Sacred Penitentiary to the confessor is contained in a double envelope. He opens the outside one but not the other, in which is found the rescript and which must be delivered sealed to the penitent. It is for the latter to hand it to some approved confessor, who will execute the rescript in the tribunal of penance and then burn or destroy the document in some other way, within a short time, three days according to some, under pain of excommunication.

On the inside envelope, by way of address, directions are usually given as to the confessor to be chosen for the execution of the rescript. (Discreto viro confessario ex approbatis ab Ordinario loci; Doctori in Theologia vel Jure Canonico, etc. P. J. Ferreres, S.J., Institutiones Canonicae, Barcinone, 1918, vol. ii, n. 109; F. M. Cappello, De Curia Romana, vol. ii, p. 359 sq., Romae, 1911; A. Tanquerey, S.S., Synopsis Theologiae Moralis et Pastoralis, vol. iii, 1912, n. 542.)

105. II. " Nothing forbids the penitent, after receiving absolution and sending his recourse to the superior, to go to another confessor having faculties to absolve him, and, after repeating the accusation of at least that one sin to which the censure was attached, to receive absolution from him. This confessor will impose on him the usual injunctions and he will not be bound by those he will receive afterward from the superior to whom recourse had been made."

(*a*) After receiving absolution, because of urgent necessity, from a confessor who had not faculties for reserved censures and had imposed upon him the obligation of recourse to the competent superior, the penitent may go to another confessor who has such faculties delegated to him habitually or for this case, and obtain absolution from him. He is free to adopt this course even after he has sent his letter to the superior and applied to him for the " mandata."

(*b*) The confessor cannot use his faculties outside of the tribunal of penance; he does not receive a recourse, as he is not one of the superiors to whom it can be made (H. O., 19 Dec. 1900, A. S. S., vol. xxxiii, p. 419); he reopens the case as confessor, the penitent repeats his confession to him, and he gives absolution after imposing the proper penance and the regular injunctions. The penitent is bound to accuse himself again only of the sin to which the censures are attached, as the others have been remitted directly by the previous absolution and he has no further obligation in regard to them. The case is thus ended and the application sent to the superior will be without effect.

106. III. "If, in some extraordinary case, recourse should be morally impossible, the confessor may still absolve from all censures, one only excepted, without demanding that condition; but he must impose the usual obligations, an appropriate penance and satisfaction for the censure. A reasonable period of time is fixed for the penitent to perform the penance and make reparation, under pain of falling again into the same censure in case of non-compliance."

(*a*) The law admits that circumstances may exist in which recourse to the competent superior would be really difficult and in which, therefore, it is not required. Such difficulty would exist if neither the penitent nor the confessor were able to write to the superior, and also if, the confessor being able and willing to write, the penitent could not appear before him for the execution of the rescript when it comes, because, by that time they will be separated by long distances; and on the other hand it would be hard for the penitent to go to another confessor. (H. O. Nov. 9, 1898; Sept. 5, 1900; A. S. xxxi, 402; xxxiii, 226.) The Holy Office does not admit impossibility of recourse when the penitent is a priest (June 7, 1899, A. S. S. xxxii, p. 128), and the present law excepts from the number of censures which may for a reason of urgent necessity be remitted without obligation of recourse, the one incurred by a confessor attempting to absolve his accomplice.

(*b*) The confessor who, under the circumstances just described, absolves thus unconditionally, must impose the obligations which would be imposed by the superior. Among them are those designated by the formula "*injunctis de jure injungendis*": reparation of injury done to a third party; reparation of scandal in the best possible manner according to the prudent judgment of confessor or Bishop; removal of the occasion of sin if there be any; promise not to fall again into the same offence; promise to abide by the prescriptions of the superior in the matter; acceptance of a special penance.

CHAPTER II

CENSURES IN PARTICULAR

GENERAL NOTIONS: VARIOUS KINDS OF CENSURES; THEIR CHARACTERISTICS

107. 1°. *Kinds.* There are three kinds of censures: excommunication, suspension and interdict. These are the only ones mentioned in the ancient legal texts as well as in the present Code. (C. 20, x, v, 40; can. 2255.) The term has been applied sometimes to other ecclesiastical penalties, like degradation, irregularities, deposition, *cessatio a divinis,* but only in a broad sense; none of these can be called a purely medicinal punishment.

108. 2°. *Main characteristics.* (*a*) Excommunication can affect only physical persons. Some canonists held that it was null and void when pronounced against a moral body, because, they argued, a moral body has no real existence in the Church and therefore cannot be excluded from it. (D'Annibale, i, n. 357, note 1.) The present law considers the latter application as valid, but it is to be interpreted in such cases as affecting each member of the body according to his share in the delinquency. (Can. 2255.)

Interdict and suspension can affect a community as a moral body; for example, a chapter, a college or university, as such. Each member of the body, even if innocent, is bound in such cases to respect the censures, but only as a member of the moral body, not as an individual; so that he ceases to be bound as soon as he ceases to belong to the body.

(*b*) Excommunication takes away the benefits of membership in the Christian society; interdict deprives one of advantages which are enjoyed therein by both clerics and laymen; suspension, of those which are special to clerics. Consequently, excommunication and interdict can fall on both clerics and laymen; suspension, only on clerics. Interdict may, moreover, affect a place.

(*c*) Excommunication is always used as a medicinal punishment or censure; interdict and suspension may be inflicted also as vindictive punishments. They may be considered such when, for example, they are inflicted for a fixed period of time, say five years, or against an offence which has ceased entirely, and therefore implies no contumacy. In case of doubt they are treated as censures.

109. 3°. *Some terms used in defining the effects of Censures.* (Can. 2256.) (*a*) By divine offices are meant the functions of the power of Orders, which by the institution of Christ or of the Church pertain to the Divine worship and are reserved to clerics, such as the administration of the sacraments, preaching the word of God, blessings.

(*b*) By legitimate or legal ecclesiastical acts are understood: the office of administrator of ecclesiastical property; the functions of judge, auditor, relator, defender of the bond, promotor *justitiae, et fidei,* notary, chancellor, cursor, apparitor, lawyer or procurator in ecclesiastical causes, of sponsors in the sacraments of Baptism or Confirmation; voting in ecclesiastical elections; exercising the rights of patronage. (Can. 2256.)

Article I

EXCOMMUNICATION

Reiffenstuel, Lib. V, tit. XXXIX; Commentaries on tit. XXXIX de Sententia Excommunicationis, in the fifth book of the Decretals; Ferraris, Bibliotheca Canonica, Excommunicatio; Suarez, De Censuris, sect. I, IV; Lega III, n. 141, sq.; D'Annibale, I, n. 360; Wernz, n. 179; Stremler, p. 252–293; A. Tanquerey, S.S. De Censuris, n. 44; Bargilliat, Praelectiones Juris Canonici, n. 1594, seq.; Ginhac, Compendium Juris Canonici, n. 1132; A. Boudinhon in Catholic Encyclopedia; Taunton, The Law of the Church, Excommunication; Smith, Elements of Ecclesiastical Law, vol. III, p. IV, sect. II; Dictionnaire de Théologie Catholique, Excommunication; Dictionary of Christian Antiquities, W. Smith & Cheetham, London, 1878, Excommunication; J. Bingham, Antiquities of the Christian Church, Book XVI, ch. II.

I. NATURE AND DEGREES OF EXCOMMUNICATION

110. 1°. *Nature.* Excommunication, breaking off relations or communication, means, in the language of the Church, exclusion from the communion of the faithful or from Christian fellowship.

(*a*) The right to exclude unworthy members from the privileges of membership belongs to every society as an essential condition for its proper organization and even existence. It was exercised by the Jews who punished certain offences with exclusion from the Synagogue (Esdras x. 8; John ix. 22; xii. 42; xvi. 2; Luke vi. 22); and Our Lord conferred it on the rulers of His Church as one of the fundamental elements of her constitution. (Matt. xviii. 15–18; xvi.19.) The New Testament shows us the Apostles using this power at once to cut off diseased members in the first Christian communities. (Rom. xvi.17; II Cor. vi.14, 17; Tit. iii.10; II John 10, 11; see Smith, Dictionary of the Bible, Excommunication.) St. Paul formally excommunicated the incestuous Corinthian and delivered him to Satan (I Cor. v.5) and a similar sentence was pronounced against Hymeneus as a teacher of heresy. (I Tim. i.20.)

That the Church claimed and exercised from the beginning the power of excommunication is admitted by all.

(*b*) In the early Christian documents excommunication is a generic term for all ecclesiastical coercive remedies, punishments and penances. Later, when, by the middle of the ninth century, the forum *externum* and the forum *sacramentale* had become more distinctly separated, the distinction was more clearly made also between penances and punishments which pertained to the external order. But for sometime yet the term excommunication continued to be applied to various kinds of punishments. It was only in the twelfth or thirteenth century that its technical meaning became definitely fixed, and the term employed to designate exclusively one of the three penalties which were thereafter distinguished from all others by the name of censures. (Dictionaire de Théologie Catholique, excommunication, column 1735.)

111. (*c*) In this strict, technical sense, excommunication is defined (can. 2257) as " a censure by which a person is excluded from communion with the faithful," or " a medicinal spiritual penalty that deprives the guilty Christian of all participation in the common blessings of ecclesiastical society." It entails the loss, not of some only, but of all the rights and privileges which a man possesses as a member of the Church.

The excommunicated person does not cease to be a Christian; he is not necessarily separated from God, nor absolutely cut off from the source of spiritual goods; but he is as if exiled from Christian society, a stranger in the Christian family, separated from the Church as an external organization.

Not, however, that the effects of excommunication are of a merely external character; such was the heretical teaching of Luther which Leo X condemned in the Bull *Exsurge Domine,* May 16, 1520; and of the Pseudo-Synod of Pistoia reprobated by Pius VI in the Constitution *Auctorem Fidei,* August 28, 1794. Excommunication is a spiritual sword which reaches the soul and conscience, severs an internal bond and deprives a man of internal graces, since it excludes him from public prayers and sacred rites, particularly the sacraments which are the providential normal channel of grace.

112. 2°. *Degrees of excommunication.* Excommunication, as understood in the beginning, admitted of as many degrees as there were grades of communion in the Christian society. Of excommunication taken in the strict canonical sense some writers find three degrees in the early discipline of the church (Morin, De Poenitentia, Lib. iv, c. 11), but generally only two are recognized, the major and the minor excommunication.

(*a*) Major and Minor Excommunication.—Major excommunication is the only one that remains now and to it applies the definition given above.

Minor excommunication consisted formally in exclusion from the sacraments or in what theologians call the passive use of the sacraments. Indirectly it produced several other effects. As a cleric is presumed to be in the state of mortal sin as long as he remains under this censure, he would not be permitted to say Mass or administer the sacraments before receiving absolution; nor should he be elected to any ecclesiastical office. (C. 10, x, v, 27.)

Minor excommunication was incurred by unlawful intercourse with excommunicated persons; consequently it ceased to be of any importance as a disciplinary measure when the number of excommunicates with whom it is forbidden to hold intercourse had been so notably reduced by Pope Martin V. By the Constitution *Apostolicae Sedis* it was implicitly abrogated, according to an interpretation which received the official sanction of the Holy Office. (Jan. 6, 1884.)

The present law states that the effects of excommunication are inseparable; therefore there are no degrees in excommunications. There remains no distinction between minor and major; all have essentially the same results, at least in regard to the benefits of which the excommunicated person is deprived. The consequences are not always the same for the faithful, who are obliged to shun some of the excommunicates, not the others, hence another distinction.

113. (*b*) *Vitandi et non vitandi, aut tolerati.*—Originally the faithful were bound to abstain from intercourse, both in civil and in religious matters, with persons who were under major excommunication as soon as these became known. An important change in this discipline was introduced by Martin V in the celebrated Constitution *Ad evitanda scandala,* which forms Article VII of the Concordat concluded at Constance with the German nation, but was destined to become universal law. (Wernz, n. 181, note 216; Jules Thomas, Le Concordat de 1516, vol. i, p. 163, Paris, Picard, 1910.) It was published at Constance in 1418.

"To avoid scandal and numerous dangers," says the Pope, "and to relieve delicate consciences, we hereby graciously grant to all the faithful that in future no one shall be bound to abstain from communicating with another in the reception or administration of the sacraments, or in other matters, civil or religious, because of any ecclesiastical sentence or censure, whether pronounced by law or by a judge, nor to avoid any one, nor to observe an ecclesiastical interdict, except when this sentence or censure shall have been published or made known by the superior in special and explicit form against some specified person, college, university, church, community or place." Those, however, are to be avoided also who have "incurred excommunication by reason of sacrilegious violence done to a cleric so notoriously that the fact can in no way be concealed or excused." Henceforth, then, there are three classes only of *excommunicati vitandi:* those who have been excommunicated nominally and publicly, those who have been declared such by the Pope or ecclesiastical superiors and the *notorii clericorum percussores.* The Pontiff declares that the change has been made solely for the sake of the faithful, not for the convenience of the excommunicated whose status is not meant to be bettered.

The present law maintains the distinction of *excommunicati vitandi* and *tolerati* but modifies the conditions for becoming *vitandus.* Henceforth, to be *vitandus* one must (i) have been excommunicated nominally by the Holy See, (ii) have been publicly denounced as such, and (iii) explicitly declared *vitandus* in the decree or sentence. (Can. 2258.)

One is considered nominally excommunicated when he has been mentioned by name and also when he has been so clearly designated that there can be no doubt as to his identity.

By "the Holy See" here is meant not only the Pope but also the Congregations, Tribunals and Offices through which is usually transacted the business of the universal Church.

There is one case in which a person would become *excommunicatus vitandus* without the above three conditions being fulfilled: it is by laying violent hands on the person of the Roman Pontiff. The penalty is incurred *ipso facto.* (Can. 2343, § 1.)

114. (*c*) Anathema. The word is used in the New Testament (Gal. i.8) and later in the language of the Church in the sense of excommunication. Sometimes the two terms are opposed to one another, the former designating rather major, the latter minor excommunication.

Gregory IX declared (c. 58, x, v, 39) that excommunication without qualification meant major excommunication. Henceforth, anathema was particularly applied to excommunication inflicted for graver crimes and with special solemnity, such as is described in the Roman Pontifical. This sense it retains to the present day.

II. EFFECTS OF EXCOMMUNICATION (Can. 2259.)

115. The effects of excommunication are, in general, to deprive of the benefits of membership in Christian society. But the legislator defines more in detail, in several canons, what these benefits are, in what sense and how far they are lost by excommunication.

1°. *Divine Offices.* (*a*) Any excommunicated person, whether tolerated or to be shunned, is deprived of the right to assist at divine offices but not to be present at sermons or instructions.

He has no right to assist; it is not said that he is positively forbidden to do so. The prohibition which used to exist is not renewed, at least not explicitly. It had fallen into desuetude in many places, principally in regard to heretics, who are freely invited to attend Catholic services. As a consequence, an excommunicated person should not consider himself free from the obligation of Sunday Mass. (Lehmkuhl, ii, n. 890–891.)

By divine offices are meant Holy Mass and other religious services like Vespers, Benediction of the Blessed Sacrament, funerals, public processions, and recitation of the divine office in choir. An excommunicated ecclesiastic remains bound to say the Breviary in private. (Can. 2256, § 1.)

(*b*) If an *excommunicatus toleratus* assists at a religious service without, however, taking an active part in it, there is no obligation to expel him, nor should this be done as long as the censure remains occult. (Can. 2232.) A *vitandus* should be expelled, even by force if necessary. Should it be impossible to eject him, the service would have to be suspended if this could be done without serious inconvenience.

(*c*) Active participation in a divine office ought not to be permitted to a *vitandus,* nor to a *toleratus* after a condemnatory or declaratory sentence has been pronounced against him or when his censure is publicly known.

116. 2°. *Use of the sacraments and sacramentals; Christian burial.* (*a*) Excommunicated persons may not receive the sacraments. The prohibition applies to all without distinction; it is binding *sub gravi,* and by way of consequence makes it unlawful for a priest to administer the sacraments to a person whom he knows to be under excommunication.

(*b*) The use of the sacramentals of the Church, such as holy water, blessed candles, etc., is forbidden to the *excommunicati vitandi* and also to the *tolerati* after a condemnatory or declaratory sentence.

(*c*) Christian burial is to be refused to the excommunicated as decreed in canon 1240.

117. 3°. *Administration or active use of the sacraments and sacramentals.* An excommunicated ecclesiastic is forbidden to administer the sacraments and sacramentals except in the cases to be explained. This prohibition affects only the lawfulness of the act, which remains valid unless it be null for want of jurisdiction, as might happen with absolution. For the sake of the faithful the following concessions are made:

(*a*) The faithful may, for any just cause, principally when there is no one else to minister to them, apply for the sacraments or sacramentals to an excommunicated priest, provided he be not *vitandus* and his excommunication has not been the object of a judicial sentence; and the excommunicated minister is allowed to accede to this request without having to inquire into the reason for it.

(*b*) But permission to ask the sacraments or sacramentals from an *excommunicatus vitandus* or even a *toleratus* whose excommunication has been pronounced by condemnatory or declaratory sentence of the court is conceded only in danger of death; grave necessity would not suffice.

In danger of death it is permitted to ask such excommunicated ministers for absolution even if another priest be present; but for the other sacraments or for sacramentals it would not be lawful to apply to them unless there be no one else to perform the office.

118. 4°. *Indulgences, suffrages and public prayers of the Church.* (Can. 2262.) (*a*) Excommunicated persons have no share in indulgences, in common suffrages, and in the public prayers offered in the name of the Church by her ministers; that is, in the spiritual treasures which accrue to the Christian community from the Holy Sacrifice, the recitation of the canonical hours, the liturgical services, good works, the merits and satisfactions of the Blessed Virgin and the saints.

The distinction made by some canonists in this matter between *vitandi* and *tolerati* is not made by the law.

It is forbidden to pray publicly, even for the *tolerati,* even if we supposed them repentant, as long as they have not been absolved.

(*b*) The faithful are allowed, however, to pray for them privately, to offer for them their good works, even if they be *vitandi.* Ministers of the Church are no doubt permitted to do the same as private persons.

(*c*) Priests may apply Holy Mass for them privately, all danger of scandal being removed. This implies that whilst the excommunicated have no participation in the common suffrages, these can be applied to them by particular intention; and that such application is permitted by the Church provided it be done privately, that is, as an act of personal devotion, without scandal, without any appearance of disregard for ecclesiastical discipline or of support given to rebellious subjects. It is only specified that when Mass is said for a *vitandus,* it should be exclusively for his conversion.

Holding public services, for example, for Protestant persons living or dead, would not be permissible, without special authorization; but it is not forbidden to offer the Holy Sacrifice, privately, not necessarily in secret, however, for them and for their various intentions, with the restriction just mentioned in regard to the *vitandi.* Nor does it seem to be forbidden to offer Mass and other suffrages for a deceased *vitandus,* unless it be publicly certain that he was in bad faith and that he died impenitent. (Wernz, n. 188; Gasparri, De Eucharistia, n. 483, 912.)

119. 5°. *Ecclesiastical legitimate acts, forum, offices, and functions.* (*a*) An excommunicated person is debarred, within the limits specified by law in the proper place, from the exercise of the legitimate ecclesiastical acts enumerated in canon 2256; thus he is not allowed to act as sponsor in Baptism or Confirmation, to vote in ecclesiastical elections, etc.

(*b*) He is partially deprived of the protection of the ecclesiastical courts. If he is *vitandus* or even *toleratus* but pronounced or declared excommunicated by judicial sentence, he may act personally in court only for the purpose of attacking the justice or legitimacy of the excommunication. He is allowed to act by proxy to avert any other spiritual damage. He may be a defendant and if summoned he is bound to appear.

Other excommunicated persons are generally permitted to act in court. (Can. 1654.)

(*c*) He is excluded from ecclesiastical offices and functions. By ecclesiastical offices, in the wide sense of the term, are understood any employments legitimately assumed for a spiritual purpose. In the strict sense, they are functions permanently established by God or by the Church, conferred according to the prescriptions of canon law and carrying with them some participation in power of orders or of jurisdiction. In law the term office is taken in the strict sense unless the context does not permit it. (Can. 145.) Here the context seems to show that this canon (2263) deals with offices in the wide sense, for of offices in the strict sense the law speaks further on. (Can. 2265–2266.)

(*d*) By excommunication is lost the right to use the privileges previously received from the Church.

120. 6°. *Ecclesiastical jurisdiction.* Regularly, excommunication deprives one of jurisdiction since it excludes from the ecclesiastical society. For the common good, however, and in order to avoid confusion the Church does not apply this rule rigorously.

(*a*) Jurisdiction is really lost only by the *vitandi,* and by the *tolerati* after a condemnatory or declaratory sentence. These could not validly perform any act requiring jurisdiction.

(*b*) Other excommunicated persons can perform such acts validly, but not lawfully unless asked by the faithful to administer to them the sacraments and sacramentals. (Can. 2261, § 2.)

(*c*) All excommunicated persons give absolution both validly and lawfully when asked by one in danger of death.

121. 7°. *Ecclesiastical appointments, promotions, favors.* (*a*) Excommunicated persons cannot lawfully exercise the right to elect, present or nominate; nor validly, when they are *vitandi,* or, if *tolerati,* after the sentence of the court inflicting the censure.

(*b*) They cannot lawfully acquire any ecclesiastical dignities, offices, benefices, pensions or other functions in the Church. Their appointment would be also invalid if they were *vitandi* or excommunicated by sentence of the court.

(*c*) No person under excommunication should be promoted to Holy Orders. The ordination, although valid, would be gravely sinful on the part both of the ordaining prelate and of the ordained cleric.

(*d*) Persons excommunicated by condemnatory or declaratory sentence cannot receive validly any favor from the Holy See unless, in the Papal rescript, mention be made of the censure, implying that the concession is made in spite of it or unless an absolution from censures, called *ad effectum,* be inserted in the rescript for the purpose of securing its validity.

122. 8°. *Dignities, offices, benefices, pensions, functions in the Church.* One in possession of these does not lose them by the very fact of falling under excommunication, but after condemnatory or declaratory sentence the fruits are forfeited and one becoming excommunicated *vitandus* loses the dignity itself, the office, benefice, pension and function.

123. 9°. *Social intercourse.* In the early middle ages the obligation for the faithful to abstain from intercourse with the excommunicated even in civil matters was rigorously enforced and applied also to their near relations. Gregory VII, in the Council of Rome, in 1078, mitigated the rigor of this discipline and excepted from the law wives, parents, children, servants and employees. Canonists added that necessity or real utility should excuse also.

The number of *excommunicati vitandi* was greatly reduced by Martin V and the obligation to shun them thus became easier of compliance. Still it was less and less strictly enforced or respected in modern times and in some places it seemed almost to have fallen into desuetude. (Smith, l.c. n. 3249.)

The present law reduces still more the number of excommunicates to be shunned, but it maintains for the faithful the obligation to avoid intercourse with them in secular affairs. Exception is made for spouses, parents, children, servants, subjects, and generally for all who have a reasonable cause for dealing with such persons.

Practically the reasonable cause will exist in almost every case. (Ferreres, Institutiones Canonicae, vol. ii, n. 1032; Lehmkuhl, vol. ii, n. 897; Genicot, vol. ii, n. 585, ix.)

Article II

INTERDICT

(The authors quoted in Article I on excommunication may be consulted also on interdict and some special works besides: P. Pithou, De l'origine et des progrés des Interdits Ecclésiastiques, Paris, 1652; A. C. Howland, The Origin of the Local Interdict, in Report of the American Association, vol. I, 428–448; E. B. Krehbiel, The Interdict, its history and its operation, Washington, 1909.)

I. NATURE OF INTERDICT

124. 1°. Interdict, in general, is synonymous with prohibition. In Roman law and afterward in canon law the term was used in a technical sense to denote certain interlocutory sentences, particularly in trials concerned with property rights. (C. 5, x, ii, 12; G. Sebastianelli, De Judiciis Ecclesiasticis, Romae, 1906, n. 70.) But from the tenth century at least, by interdict, in the language of the Church, is meant ordinarily one of the ecclesiastical medicinal punishments.

Thus understood, the Code defines it: A censure by which the faithful, while remaining in communion with the Christian society, are forbidden the use of certain sacred things enumerated in subsequent canons.

These sacred things are the liturgical services, some of the sacraments and Christian burial.

125. 2°. The prohibition admits of degrees according to the cases; interdict does not take away all the privileges of Church membership; it does not cut off from Christian communion; it may fall upon a moral, as well as a physical, body or upon a place; and for this reason it does not necessarily suppose a personal fault — in all of which it differs from excommunication, although in other respects the effects they produce are almost the same.

Interdict differs from suspension in that it deprives one of spiritual goods common to all the faithful, whilst suspension takes away the use of ecclesiastical powers special to clerics.

Like suspension, interdict may be imposed either as a strictly medicinal or as a vindictive penalty. In the latter case it is still sometimes called a censure, though only in a loose sense.

When it is imposed for a fixed period or for a past offence, it is rather a vindictive punishment. A decree of the Sacred Congregation of the Consistory, September 30, 1909, placed under an interdict of fifteen days' duration the town and suburbs of Adria, in Northern Italy, to punish the population for a sacrilegious attack on the Bishop of the diocese. Such an interdict is of a penal nature; yet it is called a censure, and clerics are warned that its violation would entail irregularity. (A. A. S., Oct. 15, 1909, p. 765; Nouvelle Revue Théologique, 7 Juillet, 1910; Wernz, n. 219, note 491.)

II. DIFFERENT KINDS OF INTERDICT

Interdict may be local, personal, or mixed; particular or general; total or partial.

126. 1°. *Local, personal or mixed interdicts.* (*a*) A local interdict affects directly a place, in which the administration, distribution or use of sacred things becomes forbidden. Indirectly it affects the persons in the place and as long as they are in the place.

(*b*) A personal interdict is one which affects directly and immediately persons and follows them wherever they go.

(*c*) Mixed interdicts, called also Ambulatory, are both local and, at least virtually, personal. They affect the territory in which the offender chances to be and follow him wherever he goes; they are thus more effective than the merely personal kind, without the inconveniences of general local interdicts; the offender is never out of interdicted territory, although a relatively small district might suffer from the censure. It might be a province, a diocese, a parish or a village, but this suffices to make the delinquent unwelcome anywhere.

The earliest references to the *Ambulatorium* are traceable to the twelfth century; several examples of it are found in the letters of Innocent III. (Patrologia Latina, vol. 214–217.) About the year 1200, Hugh Noyers, Bishop of Auxerre, laid an interdict on Peter of Courtenay, Count of Nevers, which is thus described: As soon as the Count's arrival in any place was announced and as long as he remained, the churches were closed and public services suspended; when his departure was made known by the bell of the public crier, services were resumed; "certainly a salutary and salubrious agreement, for the Count could not enter or leave a town without the greatest commotion, nor could he stay very long because of the clamor of the people." (Krehbiel, l.c. p. 81, 156.) Sometimes the interdict followed the victim or the fruit of the crime. Cistercians are said to have obtained a papal interdict on any villa in which their goods or men were forcibly kept, or some of their brethren and fugitive monks were detained against their will.

127. 2°. *Particular and general interdicts.* Both the personal and local interdicts may be particular and general:

(*a*) Particular personal interdict.— This is one imposed upon some individual or several individuals, well determined although perhaps unknown; as when a sentence of interdict is pronounced against holders of certain ecclesiastical goods, whoever they may be.

This interdict is a real censure in the strict sense of the term and can be imposed only for personal delinquencies; here it differs from local or personal interdict, which may have to be endured because of another's sin. Like other censures it may also be used as vindictive punishment.

(*b*) Personal general interdict.— This is one laid on a number of persons forming a corporate body, for example, a college, a parish, a town, a diocese, a nation. It affects the body as such and the members as part of, and as long as they belong to, the body. Being personal it follows the moral body everywhere and supposes some fault on its part; but does not necessarily follow the individual members nor suppose a personal fault on the part of each one of them. In such effect, however, there is no injustice, as has at times been objected. Interdict implies only privation of something to which one has no strict right; by it the Church, for the sake of the common good, temporarily takes away from some persons, possibly innocent, benefits which they receive from her.

128. (*c*) Local interdict is said to be particular when it is laid on individual sacred places, like a church, a cemetery, a chapel, or on several individual churches, cemeteries, chapels. Even if all the churches of the diocese were under interdict, it would still be particular provided they were interdicted individually. (Suarez, De Censuris, Lib. xxxii, n. 10; D'Annibale, i, 372, note 16.)

(*d*) Local general interdict.— Local interdict is general when laid on a territory whatever be its extent, a province, a diocese, a town, a village. It affects directly the territory and only indirectly the persons. Outside of the interdicted territory it has no effect, but within the limits of the territory all are bound by it, even strangers or persons otherwise exempt, except for a special privilege.

Like the personal, the local general interdict is more in the nature of a privation than of a censure properly so called, although, according to canonists, its violation would entail irregularity; it supposes a grievous fault but not necessarily personal. (D'Annibale, n. 372, 18.)

(*e*) Partial and total interdicts.— The effects of interdict are not indivisible like those of excommunication; one can be produced without the other and the interdict can be inflicted in all its severity or with some mitigations, according to the will of the superior. Thus a delinquent may be excluded from participation in the sacraments or from attendance at the divine services or from Christian burial or from all three at the same time. The prohibition to enter the church, *interdictum ab ingressu ecclesiae,* is one of the forms of partial interdict.

The *cessatio a divinis,* intermission of divine services, is similar in its effects to local interdict, but differs from it in several other respects; it is not inflicted as a punishment, rather as a manifestation of sorrow or as a condemnation, or protest on the occasion of some grievous offence; or as a form of reparation for the injury done to a holy place. It consists in a simple prohibition for ecclesiastics to hold divine services or administer the sacraments in that place.

III. ORIGIN AND DEVELOPMENT OF INTERDICT

129. 1°. *Origin.* Power to inflict punishments when the common good demands it comes to the Church from Christ Himself; the form which these punishments will take is determined by the ecclesiastical authority in accordance with the needs of the Christian society, as it develops from age to age.

Early documents do not mention interdict; according to some writers it seems to have been introduced as a less severe form of general excommunication. Others trace it back to various punishments and particularly to the *cessatio a divinis,* of which they claim it is an extension.

When did the Church inflict for the first time an interdict as we understand it now, is difficult to decide. In the beginning the discipline itself is not fixed so strictly and the terminology lacks precision. For some time all censures were included under the generic term of excommunication.

A few canonists find all the essential characteristics of interdict in certain punishments inflicted as early as the fourth century. (Can. Apostolorum, 37; Epist. St. Basil, 270, Migne, P.G., xxxii, 1002; Devoti, Inst. Can., Lib. iv, tit. xix, n. 3; A. C. Howland, l.c.) Others, on the contrary, find no clear example of interdict till the tenth or eleventh century. (Van Espen, Jus Ecclesiasticum, Pars 3a, tit. xi, c. 16 sq; vol. i, T. 2.) Others again, whilst granting that the juridical character of interdict had remained somewhat indefinite until that period and its use rather infrequent, refuse to admit that it was not known before and claim that it has existed as a distinct penalty at least since the sixth century. (Wernz, n. 219.)

130. 2°. *Development.* By the middle of the twelfth century, if not before, the theory of interdict is complete and its nature clearly defined; and about the same time, owing to various causes, it is given a more important place in the discipline of the Church.

(*a*) A writer counts seventy-five local interdicts from the fourth century to 1159, and fifty-seven from 1198 to 1216, during the eighteen years of the pontificate of Innocent III; to which number should be added six probable interdicts and twenty-seven threats, which unless heeded would be followed by immediate execution. (A. C. Howland, l.c.; Krehbiel, p. 43.) Personal interdicts were still more frequent to all appearances.

Their duration varied; there are examples of some lasting less than a day, and others several years. Rouen lay under interdict for one year; Oxford for five years, 1209–1214; Denmark for nine years, 1266–1275; Mantua for thirty-three years with a few brief interruptions.

Not unfrequently, during the same period, interdicts affected entire provinces and even kingdoms: Flanders, 1198–1199; Normandy, 1198; Leon and Portugal, 1198–1204; France, 1200; England, 1208–1214.

(*b*) Because of their frequency, their duration and territorial extent, interdicts might have proved, in many instances, a very heavy burden on the faithful had they been maintained in their original severity, but mitigations came at an early date through the Popes Alexander III, Innocent III and their successors. Exemptions were also granted to certain categories of persons or to certain places, and the power of laying interdicts, which some inferior prelates enjoyed, was gradually taken away from them.

With these few modifications, the discipline of the Church in regard to interdicts has remained substantially the same to the present day, theoretically at least. The Council of Trent maintained both local and personal interdicts as legitimate sanctions of ecclesiastical law and even introduced new ones. (Sess. vi, c. 1, de Ref.; Sess. vii, c. 7, 10, de Ref.) The same thing may be said of the Constitution *Apostolicae Sedis* in more modern times. In practice, however, there was a change in the use actually made of this punishment.

131. (*c*) Interdicts *a jure,* to be incurred *ipso facto,* occur more frequently in the last Collections of the *Corpus Juris* than in the earlier ones. There we find general local interdicts which might affect even whole cities (c. 5, v, 9, in Sexto), dioceses (c. 1, v, 8, in Clem.) or kingdoms (c. 1, 1, in Extrav. Communes). In the Council of Trent, on the contrary, the interdicts to be incurred *ipso facto* are very few. (Sess. vi, vii, l.c.) After the Constitution *Apostolicae Sedis* there remained only five, none of them local, still less local general. Three were partial and particular, two personal general, but laid on moral bodies, universities, colleges, chapters, not on the entire population of a diocese, province or kingdom.

(*d*) Interdicts *ab homine* of a general character also became by degrees less frequent. The one inflicted by Paul V on the Republic of Venice, in 1606, was the last of its kind. In 1713, Clement XI placed under interdict several dioceses of Sicily; but even this one, although less general, failed to bring the intended results. Experience shows that where unity of faith and a strong Christian spirit are wanting in the people, these general censures have little efficacy and may even prove harmful. The interdict laid on the city of Adria in recent years was more limited in its scope and not open to the same objections.

IV. WHO HAS POWER TO IMPOSE INTERDICTS

132. 1°. All ecclesiastical superiors having jurisdiction in the contentious forum and authority to inflict excommunication and suspension can also impose interdicts, unless withheld by a special provision of law. Hence this power is regularly possessed by the Pope and General Councils, Bishops and Particular Councils, the Legates of the Holy See, Vicars Capitular and Administrators of dioceses during the vacancy of the see, and prelates regular with quasi-episcopal jurisdiction.

Inferior prelates, archpriests and archdeacons were often delegated, in the early middle ages, to enforce discipline among the lower clergy by means of interdicts; later, under Decretal law, their authority became ordinary until it was taken from them by the Council of Trent. The chapters which had claimed and exercised for a time the same prerogative, lost it at a much earlier date, at the latest under Boniface VIII. (C. 8, i, 16, in Sexto; Wernz, n. 220.)

133. 2°. The power of a prelate to impose interdicts has regularly the same extent and the same limitations as his jurisdiction, both as regards persons and territory. The Pope, therefore, if sufficient reason for it could exist, would have authority to place under interdict the universal Church; a national Council to do the same with a whole country, and a Bishop with his whole diocese. But as was said before, in modern times the Popes used general local interdicts very sparingly — from which canonists concluded that the imposition of such punishments as would affect a large number of people or vast territories should be considered as a *causa major* reserved to the Holy See. (Wernz, n. 221.) This has now become law.

Under the present discipline Bishops may inflict particular interdicts both personal and local; and also general interdicts on the people or on the territory of a parish. But to issue local or personal interdicts, so general as to affect the whole territory of a diocese or of a nation, or the whole population of the same, the authority of the Holy See is required. (Can. 2269, § 1.)

V. EFFECTS OF INTERDICTS (Can. 2270–2277.)

134. 1°. *General local interdicts.* They prohibit, in the place affected by them, the celebration of divine offices and the administration of sacred rites, with the following exceptions most of which were allowed first by Boniface VIII in the celebrated Decretal *Alma Mater* (c. 24, v, 11, in Sexto) and are maintained or even extended by the present law. (Can. 2270–2271.)

(*a*) The administration of the sacraments or sacramentals to the dying remains permitted, provided external solemnity be left out.

(*b*) On Christmas, Easter, Pentecost, Corpus Christi and the Assumption of the Blessed Virgin local interdicts are suspended and only the conferring of Holy Orders and the solemn blessing of marriages are forbidden.

(*c*) Unless the sentence of interdict says the contrary, clerics, provided they are not themselves personally interdicted, may hold all Divine services and sacred rites in any church or oratory, but privately, behind closed doors, without singing and without ringing of church bells.

135. (*d*) In the cathedral and in parochial churches and in any church which is the only one in a town, but exclusively in these, it is permitted to celebrate one Mass, to keep the Blessed Sacrament, to administer baptism, penance, the Holy Eucharist, to assist at marriages, without giving the nuptial blessing, to hold funerals provided all solemnity be omitted, to bless baptismal water and the holy oils, and to preach the word of God. In all these functions, however, singing and external display, the ringing of bells, the playing of organs or other musical instruments are forbidden; Holy Viaticum must be brought to the sick privately.

It will be noticed that the Holy Eucharist is explicitly mentioned among the sacraments which it is allowed to administer during a general local interdict, but not Confirmation, nor Holy Orders. It is also certain now that the marriage ceremony is permitted; Extreme Unction may be given to the dying and Christian burial to all who are not otherwise withheld from it, and not exclusively to ecclesiastics.

136. 2°. *Particular local interdicts.* Like the general kind they forbid divine services and sacred functions with the exceptions mentioned above in favor of the dying and on the five great feasts of the year. The following rules have, besides, to be borne in mind:

(*a*) No divine office or sacred function may be held at an altar or in a chapel of a church where either has been placed under particular interdict.

(*b*) If a cemetery is interdicted, interments in it are now permitted but without any ecclesiastical rite.

(*c*) If a certain church or chapel has been interdicted, several distinctions have to be made: (i) If it is the church of a chapter or a capitular church, and the chapter itself is not under interdict, unless it is explicitly stated in the sentence that the conventual Mass ought to be celebrated and the canonical hours recited in another church or chapel, the canons may hold divine services in their church privately, behind closed doors, without singing or ringing of bells; that is, they enjoy, in their particular church under interdict, the privileges that are enjoyed by all ecclesiastics in any church or chapel during a general local interdict, and on the same conditions.

(ii) If it is a parochial church that has been interdicted, unless the decree of interdict demands that another be used meanwhile, the divine offices may be celebrated in it and sacred rites administered in the same manner and on the same conditions as in any parish church during a general local interdict.

137. (*d*) When a city is interdicted, its suburbs are also interdicted, not excepting exempt places, nor the cathedral itself; when a church is interdicted the chapels connected with it are likewise under interdict, but not the cemetery (can. 2273) even if it adjoins the church. (Wernz, n. 221.) When a chapel in a church is interdicted, the church itself is not interdicted by that very fact; nor when the adjoining cemetery falls under interdict, but in this case all the oratories in the cemetery become interdicted.

138. 3°. *General personal interdicts.* The few personal and general interdicts *latae sententiae* contained in the legislation of the Council of Trent, the Constitution *Apostolicae Sedis* and the present law, are all general only in a limited sense; they affect not a whole population, but corporate bodies, universities, colleges or chapters.

This is also the only kind of general personal interdict whose effects the Code here describes (can. 2274), implying that the personal interdicts inflicted by particular sentence, or *ab homine,* should also remain within the same limits.

The effects of general personal interdicts are thus notably reduced, the persons affected by them fewer and easier to determine.

(*a*) To be placed under personal interdict, a community or college must, as a body, have committed some delinquency; the interdict may then be inflicted either on the individual members who are personally guilty of the offence, or on the community as a body, or on both the community and the guilty members.

(*b*) In the first case, each guilty member is interdicted individually and must suffer all the consequences of personal particular interdict.

139. (*c*) In the second case, the censure falls on the college as such, depriving it of the rights which it possesses as a body; the individual members are not affected in their separate personal capacity. A chapter thus interdicted would be forbidden to sing the Divine Office in the choir, to hold canonical elections, etc.; the individual members would remain free to celebrate Holy Mass privately, to receive the sacraments, etc., provided they be not otherwise inhibited, for, by a special provision of the present law, all persons who are the cause of a local interdict or of an interdict on a community or college incur themselves a personal interdict. (Can. 2338, § 4.)

(*d*) In the third case the effects are cumulative; both the college as a body and the members individually are interdicted.

Under the present legislation, then, in case of general personal interdict the guilty members of the community giving occasion to it are always punished; the innocent members are not affected personally.

140. 4°. *Particular personal interdicts.* Persons who are interdicted individually or personally may not:

(*a*) Assist at the divine offices or celebrate them; they may, however, assist at sermons. Should they be passively present at a service, there would be no obligation to expel them; but they should not be allowed to take an active part in the celebration of the divine offices if they have been interdicted by condemnatory or declaratory sentence or if the interdict is otherwise notorious.

(*b*) They are forbidden to administer and to receive the sacraments and sacramentals in the same sense as persons who are under excommunication. (Can. 2260, § 1; 2261, § 1.)

(*c*) Like excommunicated persons also they are forbidden to exercise the rights of election, presentation, nomination; they are debarred from dignities, offices, benefices, ecclesiastical pensions or any other offices in the Church and cannot be promoted to Orders. (Can. 2265.)

(*d*) If the interdict has been inflicted by condemnatory or declaratory sentence, they are deprived of Christian burial. (Can. 1240, §§ 1, 2.)

141. 5°. Interdict from "entry to the church."— It implies prohibition; (*a*) to celebrate the divine services, to assist at them, or to receive ecclesiastical burial in a church.

(*b*) Should a person thus interdicted assist at a divine service, he would be guilty of serious violation of law, but there would be no obligation to expel him, nor to remove his body if he had been buried in the church.

(*c*) He is not forbidden to go to church for other purposes, for private devotions, instruction, etc.

(*d*) The prohibition applies only to churches, not to oratories, public, semi-public or private. The interdict has no effect outside the church.

142. 6°. *Partial mixed interdicts.* (*a*) An interdict may be imposed in all its severity or in such a manner that it will produce only some of its ordinary effects, according to the will of the superior.

(*b*) It depends also on the will of the superior, chiefly when the interdict is a penal one, to add further restrictions, to lay the interdict on the place as well as on the persons, so that it be both local and personal. Such was the interdict placed on the city of Adria, in 1909, by which it was forbidden to celebrate Mass and other liturgical services, to ring the bells, to administer the sacraments publicly and hold solemn burials. It was permitted only to baptize children and administer the sacraments to the sick, to celebrate marriages privately and Holy Mass once a week for the renewal of the sacred Species.

143. 7°. *Application of the foregoing rules.* Individual persons are differently affected by interdicts according as they are guilty or innocent of the offence which has given cause to the censure.

(*a*) One who is innocent may, although living in interdicted territory or having membership in an interdicted community or college, receive the sacraments privately, without absolution from interdict or any other satisfaction, provided he be free from any other censure and otherwise properly disposed. (Can. 2276.)

(*b*) Those who are the cause of a local interdict or of an interdict on a community or college, have to suffer the consequences of these censures and, besides, incur a personal interdict. (Can. 2338, § 4.)

144. 8°. Cessation from divine services, *cessatio a divinis,* is not mentioned in the Code. Generally speaking it follows the rules of local interdict; but as it is not a punishment, the law leaves it to the superior to use this measure in an individual case for a certain purpose and also to define its conditions and determine its effects. (Wernz, n. 325, sq; Smith, n. 3376.)

Article III

SUSPENSION

(D'Annibale I, n. 379 sq.; Wernz, n. 200, sq.; Stremler, p. 293, sq.; Lega, III, n. 154 sq.; Smith, n. 3282, sq.; Taunton, The Law of the Church, s.v.)

I. NATURE OF SUSPENSION

145. 1°. Suspension in general means interruption, privation, prohibition. In canon law, the term is used particularly in the sense of prohibition to use certain ecclesiastical rights. It may be a mere privation imposed as a measure of prudence, not necessarily implying guilt, *e.g.,* if a priest were not allowed to officiate in public until he had cleared himself of charges brought against him.

It may also be a chastisement for a past offence, that is, a vindictive penalty; or again a medicinal penalty or censure.

146. 2°. In this last sense, which is the one taken here, suspension may be defined as a censure by which an ecclesiastic is deprived of the powers or rights belonging to him by reason of his office or benefice.

(*a*) Suspension deprives only of rights which are special to clerics as such and can affect them alone, not the faithful in general. Excommunication and interdict take away privileges common to all the members of the Church, and therefore can affect all. By excommunication, which includes in its effects the other two censures, an ecclesiastic loses also the use of his special powers and rights, but it is rather indirectly, as a consequence of his being cut off from the communion of the Christian people. Interdict directly forbids assistance at divine services and reception of the sacraments or sacramentals, which remain permitted under suspension. It forbids their celebration and administration by way of consequence as a means to the principal end, whilst this prevention is the direct and immediate object of suspension.

(*b*) The powers affected by suspension include the power of Order as well as those of jurisdiction, with this difference that the power of Order cannot be taken away even temporarily, inasmuch as it is of divine institution and has been conferred through the sacrament; but can only be bound in such a way that its use becomes unlawful; whilst the power of jurisdiction, whether ordinary or delegated, can be withdrawn entirely.

The rights arising from the possession of a benefice pertain to its income and its administration.

(*c*) Suspension does not take away the office itself or the benefice but only the use or exercise of the powers or rights connected with them, and in this it differs from deposition and degradation.

II. ORIGIN AND DEVELOPMENT OF SUSPENSION

147. 1°. *Origin.* Every legitimately established society must have the right to appoint the officials it needs to carry out its purpose, and to remove them from office if they prove unfit for it.

The Church has received this right from her Divine Founder; and has exercised it from the beginning. In the early days of Christian society the punishment usually inflicted on guilty clerics was deposition and reduction to the ranks of the laity.

As the discipline gradually became less severe and ecclesiastics were allowed more easily to resume their functions, removal from office ceased to be habitually permanent, and the ancient deposition became suspension. There are even examples at a very early date of what was called later suspension from benefice. St. Cyprian speaks of certain monthly distributions from which clerics guilty of minor offences were excluded. (Epis. 28, al. 34; Bingham, Origines Ecclesiasticae, I, p. 183.)

148. 2°. *Development of the discipline.* For some time, the distinction between deposition and suspension was not so clearly marked and the language of councils or ecclesiastical writers when treating of this subject often lacks precision.

The terminology becomes more exact in the sixth and seventh centuries, showing a progress in the discipline itself. About the same time mention is already made of suspension *latae sententiae,* although the expression does not yet occur. (Epaon, 512, c. 4; xiii Toledo, 683, c. 11.)

The canonists of the twelfth century complete the theory of suspension, explaining with more detail its nature and effects as distinguished from those of other penalties and particularly of the other two censures. The spread of the system of benefices in that period was an occasion for bringing out more explicitly and more completely the distinction between suspension *ab officio* and suspension *a beneficio.*

In modern times the only innovation of any importance in this matter was the introduction by the Council of Trent of the suspension *ex informata conscientia.*

The present law maintains the former discipline with only minor modifications, adding precision to some of the existing prescriptions and settling some controversies.

III. SPECIES OF SUSPENSIONS

149. 1°. Like other censures, suspension may be *a jure* or *ab homine, latae* or *ferendae sententiae*, reserved or not reserved.

2°. Like interdict, suspension may be partial or total, for its effects are also divisible. It may be particular or general, that is, inflicted on individual persons or on moral bodies, communities or colleges of clerics. Chapters and colleges may have rights and possessions which belong to the body, not to the separate members; therefore the moral body may be deprived of them and suspended. But a college could not be suspended from the power of Orders because it is exercised exclusively by individuals. Each member of the college could be deprived of it as an individual.

150. 3°. The principal division of suspension is into (*a*) suspension from office only, by which a cleric is forbidden to exercise the functions of his office or the power of Orders and jurisdiction; (*b*) suspension from benefice by which he is deprived of the income and administration of his benefice; and (*c*) suspension from both office and benefice.

Suspension from benefice is subdivided into privation of the income of the benefice and loss of its administration.

Suspension from office can be subdivided as many times as there are powers of which a cleric may be deprived or which he may be forbidden to use. Hence we have:

(*a*) Suspension from jurisdiction in general, which forbids all acts of jurisdiction ordinary or delegated, in the internal or external forum.

(*b*) Suspension from divine functions, *a divinis,* which forbids any act of the power of Orders which one has received either by ordination, for example, to the priesthood, or by special privilege, *e.g.,* if a priest had been granted the power to administer Confirmation.

151. (*c*) Suspension from Orders, *ab Ordinibus,* a prohibition to exercise the powers received by ordination, as distinct from those received by special privilege or from the power of jurisdiction.

(*d*) Suspension from Sacred Orders, a prohibition to exercise the powers of major Orders.

(*e*) Suspension from a certain, definite Order, which forbids any act of the specified Order. The person under this kind of suspension is forbidden also to confer the same Order, to receive a higher Order and to exercise it, should it have been received in spite of the prohibition.

(*f*) Suspension from conferring a certain definite Order. It forbids the conferring of the specified Order, not, however, an inferior or a superior one.

(*g*) Suspension from a certain and definite ministry, for example, from the ministry of confession, or from a certain definite office, for example, any office to which is attached the care of souls. It prohibits all acts of the specified ministry or office.

(*h*) Suspension from the Pontifical Order, or prohibition to exercise the episcopal power of Orders as distinct from the sacerdotal or ministerial power.

(*i*) Suspension from pontificals, *a pontificalibus,* a prohibition for a prelate to exercise the pontificals, that is, to perform those functions for which the laws of Liturgy command the use of the pontifical insignia, the crozier and the mitre. (Can. 337, § 2.)

IV. EFFECTS OF SUSPENSION

152. 1°. *General principles.* (*a*) Directly and immediately, suspension deprives the culprit of the rights and powers explicitly or implicitly mentioned in the decree or sentence, taking the words in their natural, yet somewhat strict, sense, as we are here in *materia odiosa*. Hence suspension decreed absolutely, without restriction, implies suspension from both office and benefice.

Suspension from office does not entail suspension from benefice, and, vice versa, suspension from benefice does not imply suspension from office, unless the contrary be stated explicitly or implicitly.

Suspension from office or from benefice, without restriction, means suspension from all offices or benefices possessed within the jurisdiction of the superior who inflicted the censure. If, therefore, it is inflicted by the Ordinary of the diocese, it will apply to all the offices or benefices the cleric possesses in that diocese; if inflicted *ipso facto* by common law, to all offices or benefices in any province of the Church. It is explicitly declared by the present law that an Ordinary's decree of suspension cannot affect offices or benefices outside of his diocese. (Can. 2282.)

Suspension from a specified power or right deprives one of that which is expressly mentioned, but should not be extended beyond these limits.

(*b*) Indirectly and by general provision of law, suspended persons, like the excommunicated and personally interdicted, may not exercise the rights of election, presentation, nomination; nor acquire dignities, offices, benefices, ecclesiastical pensions, and this under pain of nullity if the suspension was pronounced by condemnatory or declaratory sentence. They may not be promoted to Orders; and pontifical favors received by them are null, if there has been a sentence and no mention is made of it in the rescript. (Can. 2283, 2265.) Some canonists held, against the common opinion, that these effects are produced only by general suspensions *a jure,* not, for example, by suspension from benefice; but the present law does not distinguish, and assimilates suspended clerics to excommunicated ones in this matter. From the nature of the case, this is to be understood of individual or personal suspension, not of one inflicted on a community or college. (Wernz, n. 209; D'Annibale, n. 384, note 43.)

153. 2°. *Suspension from office.* (*a*) If total, that is, decreed absolutely, without restriction, it does not take away the office itself, but prohibits all exercise of the power of Orders, jurisdiction or administration. If the suspension is from some special power or function, its effects have to be determined from the wording of the law or sentence.

(*b*) When the suspension forbids the administration of the sacraments or sacramentals, as, for example, the *suspensio a divinis,* the rule is the same as for excommunication. (Can. 2261.) The suspended cleric cannot lawfully administer the sacraments or sacramentals, except when legitimately asked by the faithful. If his suspension has not been pronounced by special sentence, he may consider every request as legitimate. After a condemnatory or declaratory sentence, it is only in danger of death that the faithful may ask absolution from him, and likewise the other sacraments or sacramentals if there is no other priest to administer them.

(*c*) When the suspension forbids the use of the power of jurisdiction, whether of the internal or external forum, acts requiring jurisdiction, such as sacramental absolution, are thereby rendered illicit or even invalid. They are invalid after a condemnatory or declaratory sentence of suspension, or when the superior has expressly declared that the jurisdiction itself is withdrawn; otherwise they are only unlawful. They are even lawful when performed at the request of the faithful, as said before. (Can. 2261.)

154. 3°. *Suspension from benefice.* (*a*) It deprives of the revenue of the benefice, allowing, however, the suspended cleric to dwell in the residence which belongs to the benefice. It does not take away the administration, unless in the decree or sentence it be explicitly declared that the administration is taken away and given to some one else.

(*b*) By benefices, in penal matters, are not understood pensions or any other contributions like perquisites, Mass stipends, etc., unless they be expressly mentioned. Other revenues may be left to a cleric when the censure is inflicted by way of vindictive penalty, so that he may live in a manner befitting his state. But when the suspension has been inflicted by way of censure, nothing more need be left him, outside of the case of extreme necessity, than the use of the beneficial residence explicitly granted him by law; since it depends on him to obtain absolution and the full income from the benefice.

When absolution is obtained, the revenues lost during the time the suspension lasted are not recovered, provided the suspension be not unjust or invalid. (Wernz, n. 211.)

(*c*) If in spite of the suspension the beneficiary would appropriate to himself the revenue of the benefice, he would be bound to make restitution; he might be compelled to do so by means of canonical penalties if necessary.

As the revenue does not belong to the suspended cleric, the obligation to make restitution exists antecedently to any intervention of the court, even if the suspension is occult.

155. 4°. *General suspension.* Suspension may be incurred by a community or college of clerics in the same manner and on the same conditions as interdict.

(*a*) The community or college must as a body be guilty of some offence justifying the censure, *e.g.,* a chapter which would enact regulations contrary to the rights of the Holy See, or give official support to a schismatic prelate.

(*b*) The suspension may be inflicted on each delinquent member of the community, and it then has the effects of a personal suspension; or it may be inflicted on the community as a body, depriving it of the exercise of the rights which belong to the corporate body as such. A chapter, for example, might be deprived of the right of election or presentation. The suspension may also be inflicted on both the delinquent members and on the community as a body, in which case the effects are cumulative. The guilty members suffer the loss of some of their personal prerogatives and the community is deprived of the exercise of rights which require a corporate action.

TITLE IX

VINDICTIVE PENALTIES

(Wernz, n. 95, sq.; D'Annibale, n. 300, sq.; Stremler, p. 25.)

GENERAL PRINCIPLES

156. 1°. *Nature.* Vindictive penalties have for their primary but not exclusive object the good of the community, and the expiation of crime. Hence the amendment of the delinquent does not give him the right to be released from them, and regularly they are inflicted for a definite time. Unlike censures their duration is not necessarily contingent upon the offender's repentance.

2°. Appeal from vindictive penalties has ordinarily a suspensive effect and not a merely devolutive one, as is frequently the case with recourse from censures. (Can. 2243.) Pending the appeal vindictive punishments take no effect unless the law expressly provides otherwise.

3°. *Execution of vindictive penalties.* (*a*) A sentence of degradation, deposition and privation of office or benefice must be executed without delay; (*b*) sometimes there is a scandal to be repaired which demands the immediate punishment of the offender; (*c*) again, if the penalty has been incurred *ipso facto* and the judge has pronounced a merely declaratory sentence, he is not authorized to suspend its execution.

(*d*) Outside of these cases, if an ordinary punishment has been inflicted by condemnatory sentence for a first offence upon a defendant heretofore irreproachable, it is left to the prudence of the judge to suspend the execution of the sentence; on this condition, however, that, should the offender become guilty within three years of the same or of a different delinquency, he shall incur the penalty of both offences.

157. 4°. *Release from vindictive penalties.* (*a*) If they are inflicted for a definite time or under a certain condition, they cease of themselves when the time has elapsed or the condition is fulfilled.

(*b*) If they are perpetual, release from them may be obtained by dispensation of the proper authority in accordance with the rules laid down for the remission of punishments in general. (Can. 2236–2237.) The same holds good for the remission of a temporary penalty before its time-limit arrives.

(*c*) The proper authority to dispense from a vindictive punishment is the person by whom it was imposed, his superior in the matter, his successor or he to whom this power has been committed. (Can. 2237.)

(*d*) In urgent occult cases special powers are granted to confessors similar to those granted them for absolution from censures under the same circumstances.

If the delinquent cannot observe a vindictive punishment *latae sententiae* without making known his secret sin, which would entail loss of reputation and scandal, any confessor may, in the sacramental forum, suspend for him the obligation of undergoing the punishment, but must impose upon him the burden of having recourse, at least within a month, by letter and through the confessor, if this can be done without grave inconvenience, no name being mentioned, to the Sacred Penitentiary or to the Bishop if he has the required faculties, and of accepting their orders.

This applies only to occult cases, as danger of infamy or scandal will not exist if the crime is already publicly known; and only to punishments which have been incurred *ipso facto,* for if they had been inflicted by sentence of court the cases could not be occult nor urgent.

Hence the power of dispensing is here granted to the confessor in the sacred tribunal, not to other superiors, and the party is bound to have recourse through the confessor, not through other persons.

The confessor does not grant a dispensation but only a suspension of the penalty, and although it is not explicitly stated, the punishment would, no doubt, have to be undergone if the obligation to have recourse to the proper superior were not complied with, or if the dispensation were not granted by him.

(*e*) If, however, in some extraordinary case, recourse to the superior is not possible, the confessor himself can grant the dispensation, in the same manner as he can, in the like circumstances, absolve from reserved censures. (Can. 2254, § 3.)

CHAPTER I

COMMON VINDICTIVE PENALTIES

I. LIST OF THE PRINCIPAL ONES

158. The law gives here a list of the principal penalties common to clergy and laity, which ecclesiastical superiors can inflict upon any member of the Church according to his guilt.

The list does not claim to be exhaustive. Other punishments may be used but these are the customary ones:

1°. Local interdict and interdict laid on a community or college, perpetually or for a definite time, or according to the good will of the superior, that is, until it will please the superior to remove it.

2°. Interdict from entering the church perpetually or for a determined period of time or at the good pleasure of the superior.

3°. Penal transfer or suppression of an episcopal see or of a parish. Transfers or suppressions may be merely administrative acts; but they may also be punishments by reason of the manner in which they are effected, the reasons for which they are decided upon, the effects they may have, the circumstances which accompany them.

4°. Infamy of law.

159. 5°. Privation of ecclesiastical burial as decreed against certain delinquencies by canon 1240. (Book iii, Of Sacred Things, sect. i, c. ii.)

6°. Privation of the sacramentals.

7°. Privation or temporary suspension of a pension paid by the Church or out of Church funds; or loss of some other ecclesiastical right or privilege.

8°. Prohibition to exercise legal ecclesiastical acts.

9°. Disqualification for ecclesiastical favors or for positions in the Church which do not require the clerical state; or for academic degrees conferred by ecclesiastical authority.

10°. Privation or temporary suspension of a function, faculty or favor already obtained.

11°. Privation of the right of precedence, of active or passive vote, of the right to titles of honor, to a distinctive dress, to insignia conceded by the Church.

12°. Pecuniary fines.

The nature of several of these punishments has already been explained or is sufficiently clear from the terms. Some further prescriptions are added by the law regarding some of them.

II. OF SOME PENALTIES IN PARTICULAR

160. 1°. The penal transfer or suppression of an episcopal see is reserved to the Pope; that of a parish can be made by the Ordinary of the place, but only with the advice of the chapter or of the diocesan consultors. Their consent is not necessary but they have to be consulted, under pain of nullity of the act. (Can. 105.)

161. 2°. *Infamy.* (*a*) Notion and species. Infamy means total loss of good name resulting from a fault that is serious and attended in many cases with public contempt.

A person may become canonically infamous in two ways: by a disposition of the ecclesiastical law which pronounces him such on account of some crime; this is infamy of law. Or he may become infamous by his own evil deeds which cause the public to form a very unfavorable opinion of him; this is infamy of fact.

Infamy of law may be *latae* or *ferendae sententiae.* The following incur infamy of law *ipso facto:* (i) Catholics formally joining a non-Catholic sect or adhering to it publicly; (ii) those who desecrate the sacred Species (can. 2320); (iii) persons desecrating the graves of the dead (can. 2328); (iv) persons laying violent hands on the person of the Pope, of Cardinals or Papal Legates (can. 2343, § 1); (v) those who take part in a duel (can. 2351, § 2); (vi) bigamists (can. 2356); (vii) laymen or clerics guilty of certain sins against chastity. (Can. 2357.)

A person is canonically infamous *de facto* when because of some crime or wicked general conduct, he has, in the prudent judgment of the Ordinary, lost the esteem of honest and right-minded Catholics.

Infamy either of law or of fact is something personal and its effects do not extend to the relations of the guilty party.

(*b*) Effects of Infamy. (i) Infamy of law produces an irregularity; moreover, it disqualifies for benefices, pensions, offices, ecclesiastical dignities; for the exercise of the legitimate acts of any ecclesiastical right or office, for any ministry in sacred functions. After sentence of the court a person who is infamous by law cannot vote in canonical elections (can. 167), nor stand as god-father in baptism or confirmation (can. 765–795); nor exercise the right of patronage (can. 1470, § 4); he is not admitted to appear as a witness in an ecclesiastical trial, nor as an expert or arbiter (can. 1757, 1795, 1931); if the infamy is publicly known he ought to be refused holy communion. (Can. 855.)

(ii) Infamy of fact excludes from any Orders (can. 987, 7°), from dignities, benefices, ecclesiastical offices; from the exercise of the sacred ministry and from the ecclesiastical legitimate acts. (Can. 2294.)

(*c*) Cessation of Infamy. Infamy of law ceases only by dispensation granted by the Holy See. (Can. 2237, § 2; can. 2295.)

Infamy of fact ceases when in the prudent estimation of the Ordinary the reputation has been reestablished with good and serious people; this will be the result of a multitude of circumstances, particularly of an enduring amendment.

162. 3°. *Disability.* (*a*) Nature and species. Disability is a punishment by which a person is made unfit for, and incapable of being appointed validly to, an office, benefice, etc.; it may be *latae* and *ferendae sententiae.*

(*b*) By whom inflicted. When the qualifications for an office, benefice, etc., are determined by common law, no one can pronounce the punishment of disability against a person and declare him disqualified for the office or benefice except the Sovereign Pontiff, for only the supreme authority in the Church can take away from a person the rights he possesses by common law.

(*c*) Effects. If the disability is *latae sententiae* it is incurred as soon as the crime to which it is attached has been committed, and strictly speaking, one thus canonically infamous, even by a secret crime, should refuse any appointment, although offered before there has been any declaratory sentence. It is admitted, however, that this obligation really exists only in cases of notorious crimes, as the Church does not expect culprits to publish their occult guilt.

Disability has reference to offices or benefices to be acquired, but does not carry with it privation or loss of those already obtained unless expressly stated.

(*d*) How is disability removed? It follows the rule of penalties in general and is removed by dispensation of the proper authority. The power granted to Bishops by the Council of Trent to dispense from certain occult irregularities was commonly interpreted as not extending to disabilities. Under the present discipline, Bishops can dispense from disabilities *latae sententiae* decreed by the common law when they are occult but not when they are public. (Can. 2237.)

163. 4°. *Pecuniary Fines.* (*a*) Fines have been used as punishments by ecclesiastical courts at least since the seventh century, particularly among the Germanic tribes, in whose political system pecuniary compensations held a great vogue. They were the occasion of many abuses which the Church, from the twelfth century to the Council of Trent, had to struggle against almost constantly.

In themselves pecuniary fines are legitimate; they were maintained by the Tridentine Council as punishments for certain crimes (Sess. vi, c. 1; xxiii, c.l.; xxv, c. 3, 19, de Ref.), and in modern times they have been imposed by Roman Congregations on both clerics and laymen. But in order to prevent the abuses of which they are liable to become the source, it was provided that they should be devoted to pious works and never appropriated by the ecclesiastical judges or the Ordinary, except in cases in which, for very special reasons, this would be explicitly permitted by law. Bishops were forbidden to use them for the salary of their Vicar-General or of the officials of the chancery or episcopal court.

(*b*) All these enactments are implicitly maintained in the present Code, in which it is decreed that fines established by common law ought to be used for pious purposes unless otherwise stated in the same law. The same rule applies to fines imposed by particular legislation and it is not lawful to employ them for the benefit of the episcopal mensa or for that of the chapter. (Can. 2297.)

CHAPTER II

VINDICTIVE PENALTIES SPECIAL TO ECCLESIASTICS (Can. 2298.)

I. ENUMERATION OF THESE PENALTIES

The punishments which are imposed on clerics only are the following:

164. 1°. Prohibition to exercise the sacred ministry except in a certain church.

2°. Suspension, perpetual or for a fixed time or at the will of the superior, not, as in censure, till the offender recedes from contumacy.

3°. Transfer by way of punishment from an office or benefice held by an ecclesiastic to another one of an inferior grade.

4°. Privation of some right connected with a benefice or office.

5°. Disability for all or for some dignities, offices, benefices, or other functions special to clerics.

6°. Penal privation of an office or benefice with or without a pension. Penal is opposed here to administrative transfer or removal, which does not necessarily suppose guilt but may be demanded by the common good. A pension may or may not be granted by way of compensation.

7°. Prohibition to dwell in a certain place or territory.

8°. Order to reside in a certain place or territory.

9°. Prohibition to wear the ecclesiastical dress for a time.

10°. Deposition.

11°. Perpetual privation of the ecclesiastical dress.

12°. Degradation.

II. OF SOME PUNISHMENTS IN PARTICULAR

165. 1°. *Privation of office, benefice, or dignity.* (Can. 2299.) (*a*) If the benefice held by a cleric is one of those to which is attached the privilege of permanency, penal privation can be pronounced only in the cases specified by law. (Gennari, Sulla Privazione del Beneficio Ecclesiastico, p. 1; Reiffenstuel, Lib. iii, tit. v, 12, n. 370.)

If the benefice is a removable one, privation may be pronounced for other reasonable causes. Some offence is always supposed but it may be of a lighter character and does not need to be mentioned by law as a legitimate cause for deposition.

(*b*) The privation of office, benefice, or dignities may be only partial and temporary; that is, the cleric holding them may simply be forbidden, for a time, to exercise some of their functions, *e.g.*, preaching, hearing confessions, etc.

(*c*) Out of respect for the ecclesiastical character, a cleric ought not to be deprived of the benefice or pension under whose title he was ordained, unless provision for his decent support be made otherwise. This, as will be seen later, does not apply to a cleric who, because of his continued obstinacy, has to be deposed or expelled from the ranks of the clergy. (Can. 2303–2304.) Provision may be made for the maintenance of an ecclesiastic by sending him to some monastery or similar institution. (Smith, l.c. p. 95 sq.)

166. 2°. *Prohibition to wear the ecclesiastical dress.* (Can. 2300.) The privation of the right to wear the clerical dress is a mild form of degradation which has been used, in modern times, when circumstances render real degradation or reduction to the lay state difficult if not impossible. While it lasts, it entails prohibition to exercise any ecclesiastical functions and loss of the clerical privileges. It is inflicted upon a cleric who gives great scandal and does not amend in spite of warnings, so that there is no remedy but to take away from him the marks and prerogatives of his rank.

167. 3°. *Prohibition or command to reside in a specified place.* (Can. 2301–2302.) (*a*) There are in Church history examples of clerics condemned by ecclesiastical superiors to perpetual exile. In Spanish Councils of the seventh century (xi Toledo, 675, c. 5; xii, 681, c. 11; xvi, 693, c. 3, 9; xvii, 694, c. 5) the penalty of exile is decreed against several crimes. Some mention of it is found also in Gaul. (Orleans, 541, c. 29.) A few references to it are met with in Gratian's Decree but none in the other parts of the *Corpus Juris,* and the Council of Trent does not include exile in the enumeration of canonical punishments.

When they speak of exile, modern canonists understand it in a milder form, consisting in the exclusion of a cleric from a diocese or a certain portion of it, in order that a cause of scandal be removed, that the delinquent be compelled to break off evil habits, or that he be separated from an occasion of sin.

(*b*) The present law admits exile in this milder form and recognizes the power of Bishops to banish a cleric from the diocese and to assign him a certain residence outside of the diocese.

It is provided, however, and this is in accordance with the general principles of Church discipline, that an Ordinary cannot command a cleric to stay in a specified place, in another diocese, without having obtained the consent of the Ordinary of that diocese or territory; unless this place be a house of penance or correction destined not only for the clergy of one diocese but for outsiders also; or an exempt religious house, in which latter case the consent of the superior would suffice.

(*c*) To be commanded or forbidden to reside in a certain place, particularly if it be for a long time, and likewise to be sent to a house of penance or to a religious house, should be considered as a severe punishment and consequently not to be imposed except in serious cases, when, according to the prudent estimation of the Ordinary, this measure is necessary for the correction of the delinquent and for the reparation of the scandal given. It is left, however, to the judgment of the Ordinary to decide when these conditions are realized and the law does not specify the offences which may be visited with this punishment.

168. 4°. *Deposition.* (Can. 2303.) (*a*) By deposition a cleric is deprived permanently of all offices, benefices, dignities, pensions and functions in the Church and becomes unable to acquire them in future; but he is not deprived of the clerical privileges nor reduced to the lay state, and he remains bound to comply with the obligations imposed by ordination, such as the obligation of celibacy and of the Divine Office.

Deposition implies more than suspension or privation of office, but less than degradation. It takes away the office or benefice, like privation, and not simply the right to exercise certain powers like suspension; and it creates moreover an inability for future promotion; but it does not, like degradation, deprive the offender of the clerical privileges. (Wernz, n. 120.)

169. (*b*) The Church, like every complete society, must have the power to depose from office unworthy incumbents and pronounce them unfit for the same position in future. She claimed and exercised this power from the beginning. The term deposition does not seem to have been used in its technical sense before the third century; and until a much later date the distinction between degradation, deposition, privation, suspension, interdict may not have been clearly made; but the punishments which these names served later to designate commenced to appear in use as soon as the Church began to organize. St. Clement of Rome, at the end of the first century, refers to a case of deposition in the Church of Corinth (I Cor. xliv. 5; liv. 2; lvii. 1); Tertullian mentions another one (De Baptismo, c. 17), and Origen was himself deposed by the Synod of Alexandria in 231.

After the third century examples of deposition become more frequent. (Wernz, n. 118; Bingham, l.c. Book xvii, c. iv; Vacandard, Dictionnaire de Théologie Catholique, déposition.) Sometimes the deposition was partial, from a higher to a lower Order, or from the office with permission to retain the title and dignity; more habitually it was total and involved disability for promotion in future.

Sentences of deposition were pronounced by the Bishop assisted by his presbyterium or by neighboring Bishops, when the sentence was to be pronounced against a cleric in major Orders. In Africa, and afterward in Spain, Gaul and Germany, six Bishops were required for the deposition of a priest and three for that of a deacon. As it often proved difficult, however, to bring together so many prelates, Decretal law demands only the cooperation of the chapter; and even this ceased gradually to be required by virtue of customs which were approved by Boniface VIII and sanctioned by the Council of Trent.

170. (*c*) Under the present discipline, cases involving deposition are to be tried before a tribunal of five judges (can. 1576) and it is enacted that this penalty is not to be inflicted except for crimes specified by law. It may be inflicted on: obstinate apostates, heretics, and schismatics after repeated admonitions (can. 2314); clerics who would desecrate the sacred Species (can. 2320); who simulate the celebration of Mass or the hearing of sacramental confessions (can. 2322); who violate the graves of the dead (can. 2328); who are guilty of procuring abortion (can. 2350); or of certain very grave delinquencies, such as murder, abduction of young children, usury, incendiarism, slave-traffic, theft, etc. (can. 2354); clerics in sacred Orders who obstinately refuse for three months to wear the clerical dress or give up a mode of life unbecoming to their state (can. 2378); who illegally enter into possession of a benefice (can. 2394); who, in spite of several admonitions, continue to hold a benefice, office or dignity of which they have been deprived. (Can. 2401.) (Catholic Encyclopedia, Deposition.)

171. (*d*) By the penalty of deposition a cleric loses even that benefice or pension which served as a title for his ordination; but if he did not have any other means of living or any revenue for decent support, the Ordinary should provide for him in the best possible manner so that he be not reduced to go begging and disgrace the clerical state. This obligation, however, on the part of the Ordinary, is one of charity only, not of justice. (Can. 2303, § 2.)

(*e*) If the deposed cleric does not show any signs of amendment, and chiefly if he continues giving scandal and refuses to heed new warnings, the Ordinary may deprive him forever of the right to wear the ecclesiastical dress. This entails the loss of the clerical privileges and frees the Ordinary from even the obligation in charity, referred to above, of providing for the support of this ecclesiastic. (Can. 2304.)

172. 5°. *Degradation.* (Can. 2305.) (*a*) Degradation includes deposition, perpetual privation of the ecclesiastical dress and reduction of the cleric to the status of a layman, which implies the loss of the clerical privileges. Formerly he was also handed over to the secular arm. He retains the powers conferred upon him by ordination and can exercise them validly but not lawfully; and he remains bound to observe the law of celibacy and to recite the Divine Office.

173. (*b*) Down to the twelfth century there is little difference between deposition and degradation; the two terms are freely used one for the other, and the effects of the two punishments are substantially the same, the degraded ecclesiastics retaining the clerical privileges and remaining exclusively liable to ecclesiastical penalties.

The change was due to the complaints of the laity and of civil magistrates, who claimed that under cover of the *Privilegium Fori* clerics guilty of grave offences, even when degraded, often escaped the punishment due to their crimes. It was asked, therefore, that after degradation they be abandoned to the secular power to be punished according to the law of the land. The Popes refused at first to yield to these demands and insisted on the right which all clerics have to be tried exclusively by ecclesiastical judges. Gradually, however, without giving up the principle, some concessions were made.

Pope Lucius III, in 1184, and after him Pope Celestine III decided that clerics guilty of some particularly grievous offences, if after deposition they continued contumacious, would be deprived of their privileges and handed over to the secular arm. Innocent III (c. 8, x, v, 20) defined in detail the difference between deposition and degradation and decreed that the latter would be pronounced by the ecclesiastical superior in presence of the civil magistrates.

Boniface VIII set forth the manner of proceeding and distinguished two forms of degradation, the verbal and the real or actual degradation. The former consisted in a sentence condemning the delinquent to be deprived of his privileges and excluded from the ranks of the clergy; the Ordinary pronounced it, assisted by Bishops whose number was fixed by law according to the rank of the culprit.

The real degradation was the actual carrying out of the sentence; still greater solemnity surrounded it. The various insignia of his office and dignity were successively taken from the delinquent with words expressing the meaning of the act, and finally he was formally expelled from the clerical state. (C. 2, v, 9, in Sexto.)

The Council of Trent introduced few changes in this discipline, which had remained substantially the same since the days of Boniface VIII, except that the intervention of several Bishops was not insisted on, and they could now be replaced by other prelates, mitred abbots or even simple priests. These had a real part in the sentence of degradation, which could not originally have been pronounced validly without the consent of the majority of them; even unanimity would have been required according to some canonists. (Wernz, n. 127 sq.; Vacandard, l.c., Déposition et Degradation; Catholic Encyclopedia, Deposition, Degradation.)

174. (*c*) In modern times, as the civil law in many countries does not recognize the *Privilegium Fori,* or as civil courts have been authorized to try the cases of clerics, degradation has not the same meaning nor the same importance. Still it may be fitting that before a guilty cleric be condemned to an ignominious punishment by the secular court, he be reduced to the lay state. In any case, degradation remains for the Church the means of showing her abhorrence for particularly grave offences.

Hence the penalty of degradation is maintained in the new Code, with all the essential effects it had under the former discipline.

The degradation now also may be merely verbal, that is, inflicted by sentence only; or real, that is, surrounded with all the solemnities and formalities prescribed in the Roman Pontifical. (Ordo Suspensionis, Reconciliationis, Depositionis, Dispensationis, Degradationis et Restitutionis Sacrorum Ordinum.) At present, however, verbal degradation has the same juridical effects as real; culprits would too often refuse to submit to the formalities of real degradation and thus render the sentence, in part at least, ineffective.

175. (*d*) Degradation can be inflicted only for crimes expressed in law and on clerics who, having been already deposed and deprived of the clerical habit, continue for a year to give great scandal.

By the present legislation it is inflicted on clerics who have formally joined or publicly adhered to a non-Catholic sect and do not amend after warning (can. 2314); on those who lay violent hands on the Sovereign Pontiff (can. 2343); or who are guilty of voluntary homicide (can. 2354); or of particularly grave cases of solicitation (can. 2368); on Religious bound by a solemn vow of chastity or on clerics in Sacred Orders who presume to contract marriage and refuse to heed warning. (Can. 2388.) The penalty is always *ferendae sententiae.*

(*e*) Cases of degradation are to be tried before a tribunal of five judges. (Can. 1576, Book iv, on Trials.)

Like deposition, degradation is a penalty permanent of itself, and persons upon whom it has been inflicted have no right to be released from it upon amendment; but the superior can remit it, if he chooses, when full penance has been done.

Degradation and deposition are not among the penalties which the Ordinary has power, in public cases, to remit, when they are inflicted by common law (can. 2237, § 1, 3°); they are not *latae sententiae* and moreover they include disqualification for office, which is explicitly mentioned among the penalties reserved to the Pope.

TITLE X

PENAL REMEDIES AND PENANCES

CHAPTER I

PENAL REMEDIES

(Wernz, n. 253, sq.; S. B. Smith, Elements of Ecclesiastical Law, vol. III, p. 11; The New Procedure in criminal and disciplinary cases of Ecclesiastics, 1888, p. II; Droste-Messmer, Canonical procedure in disciplinary cases of clerics, p. II, sect. II, c. l.; Baart, Legal Formulary, p. 427; Laurentius Institutiones Juris Ecclesiastici, n. 346, sq.)

I. GENERAL NOTIONS

176. 1°. Penal remedies are certain measures taken by the ecclesiastical authority to "prevent the occurrence of evil, forestall scandal, remove voluntary occasion and all proximate cause of delinquency." They are called also preventive punishments because they aim to prevent rather than chastise wrong-doing.

Remedies suppose some evil, actual or impending; "penal" means that they partake of the nature of punishment, not necessarily in themselves but by reason of the circumstances in which they are applied. Thus spiritual exercises may be recommended to the most innocent as a means of sanctification, but if they are imposed as an exceptional obligation upon some individual on account of an imprudent or sinful action, they become painful to human feelings and a punishment. The same is true of warnings, corrections, precepts.

177. 2°. Because of their penal character these remedies presuppose some offence or something proximate to an offence, *e.g.*, conduct, which, though not reprehensible in itself, appears so in the eyes of men and may thus cause scandal. The reality of the offence must always be verified with a care proportioned to the seriousness of the charge or to the severity of the remedy to be prescribed. The investigation is extra-judicial and may be secret or public, formal or informal according to the case.

178. 3°. The use of penal remedies is recommended to the Bishops by the Council of Trent. (Sess. xiii, c. 1, de Ref.) "The Bishops," says the Holy Synod, "should bear in mind that they carry a staff not a scourge, and that they ought to preside over those subject to them not so as to lord it over them but to love them as sons and brethren; and to strive by exhortation and admonition to deter them from what is unlawful, that they may not be obliged because of transgressions to coerce them by due punishments."

This doctrine is set forth in a more explicit and formal manner in the Instruction of 1880 prescribing a form of procedure in the disciplinary and criminal cases of clerics to be followed in Italy and other countries, and a few years later extended to the United States, with only slight modifications by the Instruction *Cum Magnopere.* "It belongs to the pastoral office of the Ordinary," the Congregation says, "to look after the discipline and correction of his clergy, to watch over their conduct and by canonical means to endeavor to prevent or eliminate abuses among them. Of these means some are preventive, some are repressive and corrective. . . . Among the preventive measures are chiefly to be reckoned spiritual retreats, admonitions and injunctions or precepts.

"These measures should be preceded by a summary cognizance of the case; and of this the Ordinary shall retain a proper memorandum so as to be able to proceed further, if need be, and to furnish proper information to superior authority in case of legitimate recourse."

179. 4°. The Instruction *Cum Magnopere* mentions as preventive remedies retreats, admonitions — which may be made in a paternal or legal form — and precepts; but it is said that these are the chief ones, implying that the enumeration is not exhaustive.

The present Code (can. 2306) has four preventive punishments or penal remedies: admonition, correction, which may correspond to the former legal warning in many cases, precept and surveillance. Retreats are counted among the penances. It is not explicitly said that these are the only penal remedies that can be used; yet neither does the text indicate that any others would have the same canonical character.

The prescriptions of the Code on this subject are of general import and do not concern only clerics, like the Instruction *Cum Magnopere.*

II. ADMONITION AND CORRECTION (Can. 2307–2309.)

180. 1°. *Nature.* (*a*) A canonical admonition implies something more than a general exhortation to virtue or a friendly advice. It is the act of the superior calling upon his subject to amend or change something in his behavior that is at least exteriorly reprehensible. Monition, however, does not suppose a serious fault and is rather in the nature of caution and fatherly warning.

(*b*) Correction implies blame, reprimand, rebuke; it supposes a more serious disorder and may be very humiliating, especially if public.

2°. *Object.* (*a*) An admonition is given by the Ordinary when a person is in the proximate occasion of committing some offence or when, after proper investigation, there is a grave suspicion that he has committed such an offence. Certainty is not necessary; a suspicion suffices, provided it be well grounded.

(*b*) There is cause for correction when the conduct of some one is a source of scandal or seriously disturbs the common order.

The offence here is clearly graver than in the previous case. It would have to be ascertained with greater care, and as it is public the investigation might also be made in a public and more formal manner.

181. 3°. *Form.* (*a*) The Ordinary may administer the admonition and correction either personally or through a delegate. As to the manner of proceeding he will be guided by prudence, charity and due regard for the feelings and reputation of the party in question. It is explicitly provided that the correction may be given by letter, and recommended that it be accommodated to the peculiar circumstances of the fact and of the person concerned.

(*b*) Both monition and correction can be made publicly or secretly according to the case. Naturally the warning would have to be given in private if the reason for it was not generally known. In regard to correction, it is stated that it can be given in public only to a guilty person who has been convicted of the offence or has confessed it. In such cases it may be given either by the judge in court or by the Ordinary before the criminal trial begins. It is then called judicial. Judicial correction either takes the place of punishment or is added to it, especially in cases of relapse, to give greater efficacy to the sanction and to secure amendment more surely.

(*c*) The public reprimand and monition should be made either before a notary or the Curia, or before two witnesses or by letter, but in such a manner that the receipt of the letter as well as its contents can be proved by some document. They may, for example, be sent by registered mail and the return receipt kept; and an exact copy of the letter may be taken and preserved for future reference. There must remain some proof even of the private monition or correction in the secret archives of the Curia.

(*d*) Both the admonition and correction may be given once or several times according to the prudent decision of the Ordinary.

III. THE PRECEPT OR INJUNCTION (Can. 2310.)

182. 1°. *Its Nature.* The canonical precept, as understood here, is a command of the ecclesiastical superior officially enjoining a delinquent to do or to refrain from doing certain acts under pain of a clearly determined punishment. The law demands that what is to be done or avoided be expressed precisely and accurately; and the same for the penalty to be incurred in case of disobedience; so that there will remain no danger of misunderstanding and no excuse for the contumacious offender.

The precept differs from warnings and corrections in that it contains an explicit threat. The threatened penalty is, however, always *ferendae* not *latae sententiae.*

2°. *Conditions.* The precept being a severer measure than monition or correction should regularly be preceded by them and imposed only after they have been disregarded. But should the Ordinary know from the outset that they will be of no avail, he is explicitly authorized to dispense with them and pass immediately to the precept.

Although not explicitly stated in the law, it is evident that the imposing of a precept must suppose as serious an offence, at least, and as careful an investigation as are demanded before giving a canonical warning or correction.

183. 3°. *Form.* No special formalities are here prescribed for observance in issuing a canonical injunction because, no doubt, they are substantially the same as for the canonical correction which regularly precedes it. According to the Instruction *Cum Magnopere,* " the precept is communicated to the accused by the chancellor in the presence of the Vicar-General, or in presence of two witnesses, ecclesiastics or laymen of approved integrity. The act is signed by those present and by the accused likewise if he wishes. The Vicar-General can bind the witnesses under oath to observe secrecy if the nature of the case be such as to require it for reasons of prudence." (n. viii.)

Canonists concluded from this that the delinquent was to be summoned by official document to appear within a few days to hear the injunction. They added that the injunction should be drawn up in writing, contain the name of the superior issuing it and that of the delinquent, the object of the precept and the punishment attached to its violation. The record of the transaction, duly signed, should be kept in the chancery.

Should the delinquent fail to appear at the appointed time the precept might be communicated to him by letter in the same manner as the correction and with the same cautions. The ecclesiastical superior would even seem to be free under the present law to adopt this way of proceeding whenever he prefers, as it is not prescribed to summon the guilty party either for the correction or the precept.

The delinquent is to be given a certain time within which to comply with the precept. Canonists usually required a term of about six days, at the end of which the threatened punishment can be inflicted. (Droste, l.c. p. 155.)

IV. SURVEILLANCE (Can. 2311.)

184. "If the gravity of the case demands it, and especially if the party in question is in danger of falling again into the same crime, the Ordinary may place him under observation."

It is the duty of the Ordinary to watch over each member of his flock, but the vigilance here in question is a special and particularly close one; so much so that it is considered as an exceptional remedy to be used only in exceptional and grave cases, particularly to prevent relapses which there is some serious reason to fear.

"Surveillance may also be prescribed for the purpose of increasing the punishment, especially against relapsers."

CHAPTER II

PENANCES

185. 1°. The term here does not connote the penances or practices of mortification which a Christian may impose upon himself in atonement for his sins; nor the penances imposed upon the sinner by the confessor in the sacred tribunal; but the penances imposed by the Church in the external forum, primarily for a vindicatory purpose, as a reparation for scandal given or for the restoration of the social order after it has been disturbed by delinquencies.

They are imposed as a substitute for the canonical punishments, so that the delinquent may escape severer penalties or be dispensed from penalties incurred. Thus when absolution from censure is applied for, a penance is imposed upon the penitent as a sort of compensation for the penalty from which he is freed. Justice demands that some reparation be made for delinquencies, but in many cases it is left to the discretion of the Ordinary to apply the full penalty enacted by law or to be satisfied with lighter penances when the end in view may thereby be attained as well or even better.

186. 2°. Penances may be solemn or ordinary, public or private. Solemn penance, as practised in the first centuries of the Church, began and ended with certain rites, and was conducted according to definite prescriptions which gave it a quasi-liturgical character. It has not been in use since the fourteenth century.

Public penances consisting in works which cannot, and are not intended to, remain secret, are still in use and may be imposed for public offences, although this is done less frequently at the present time than in times past. But it is positively forbidden to impose public penances for occult delinquencies.

187. 3°. In determining the penances to be imposed it is not so much the number and gravity of the sins that have to be considered as the contrition of the penitent, taking into account his condition and the circumstances of the delinquency.

4°. The principal penances that may be imposed are the following:

(*a*) Recitation of certain prayers such as the *Miserere,* the Rosary, etc.

(*b*) Pious pilgrimages or other works of piety.

(*c*) A special fast.

(*d*) Alms for pious purposes.

(*e*) A retreat for some days in a religious house or pious institution.

The list is not meant to be complete.

Permission is explicitly given to the Ordinary to add penances to the penal remedies of admonition and correction, if he deems it advisable.

PART III

PENALTIES FOR INDIVIDUAL DELINQUENCIES

(Liber Quintus Decretalium; Wernz, Jus Decretalium, vol. vi, pars. 3a; Commentaries on the Constitution Apostolicae Sedis: Avanzini, Bucceroni, D'Annibale, Pennacchi; A. Tanquerey et F. Cimetier, De Censuris Ecclesiasticis, 1909; A. Tanquerey et Quévastre, Brevior Synopsis Theologiae Moralis et Pastoralis, Desclée, Paris, 1918, n. 770 sq.; P. J. Ferreres, S.J., Compendium Theologiae Moralis, ad normam novissimi Codicis Canonici, Barcellona, Subirana, ed., 3a, 1917–1918, n. 1230 sq.; J. B. Pighi, Censurae Sententiae Latae quas habet Codex Juris Canonici cum brevi Commentario, Veronae, 1917; Paschalis de Siena, Commentarius Censurarum juxta Novum Codicem Juris Canonici, Neapoli, 1918; M. J. O'Donnell, Crimes and Penalties in the New Code, Irish Theological Quarterly, Jan., 1918; S. Woywod, Ecclesiastical Censures in the New Code, Eccl. Review, vol. lviii, p. 300–312; F. M. Cappello, De Censuris juxta Codicem Juris Canonici; Cerato, Censurae Vigentes ipso facto a Codice Juris Canonici excerptae, Patavii, 1918.)

PRELIMINARY REMARKS

188. 1°. *Object of this third part.* After setting forth in the first and second parts the principles of ecclesiastical law on delinquencies and penalties, the legislator passes, in the third part, to the treatment of the more concrete application of these principles and to the exposition of the individual delinquencies which the Church punishes in the external forum, and of the penalties attached to them severally.

189. 2°. *Its importance.* This is the most directly practical and to many will prove the most interesting part of this fifth great division of the Code.

Here probably was expended the greatest amount of labor and care on the part of the compilers, who realized the necessity of clearness and coordination in a difficult field.

As must be expected in any society whose legislation has to meet ever-changing conditions, the penal statutes of the Church had grown in number with each succeeding generation. Many of them were abrogated by the Council of Trent, but it was not long before new ones had to be enacted, some of the old ones altered and others abolished; others again fell into desuetude. As time went on, it became more and more difficult for canonists, not to speak of the faithful, to know which clauses were still in force. This led to the promulgation of the Constitution *Apostolicae Sedis* by Pius IX, October 12, 1869. "We have been considering for a long time," says the Pope in the preamble, "how ecclesiastical censures have from age to age gradually and greatly multiplied; how some, owing to altered conditions, have ceased to serve the purpose for which they were imposed, with the result that doubts and anxieties and scruples have, not unfrequently, troubled the consciences of pastors of souls and of the faithful themselves. We have, therefore, ordered a complete revision of those censures to be made and submitted to us, so that, after mature deliberation, we might determine which of them ought to be maintained and observed, which should be modified and abrogated.

"This revision having been made we decree that only those censures will in future be in force which are inserted in this Constitution and in the manner in which they are inserted."

The Constitution *Apostolicae Sedis* marked, no doubt, an important advance; it simplified matters very much, particularly for confessors, and it has practically served as the ecclesiastical penal Code for all these years. But it was incomplete and now needed revision. Several new censures had been enacted since its publication (Tanquerey, De Censuris, n. 99, 130, 145, 160–164, 169), some of its provisions called for modifications, and, moreover, it dealt only with censures and exclusively with censures *latae sententiae.* The censures *ferendae sententiae* and all vindictive penalties had been left as they were before.

Ancient collections like the Decree of Gratian and especially the fifth book of the Decretals, contained most but not all of the penal statutes in force at the time; many others had to be looked for throughout the other books.

In this part of the new Code are gathered together and coordinated all the delinquencies punished by the common law of the Church and the precise punishments which are attached to them. "All former ecclesiastical punishments, whether spiritual or temporal, medicinal or vindictive, *latae* or *ferendae sententiae,* not mentioned in the Code must be considered as abolished." (Can. 6, 5°.)

190. 3°. *Divisions.* In the Constitution *Apostolicae Sedis,* censures were classified first according to their nature: excommunications, suspensions and interdicts; then according to the power required to absolve from them or the superior to whom they were reserved, the Pope, the Ordinary, etc. This was rather an artificial classification but convenient for practical purposes, particularly for the work of confessors.

The order and divisions adopted in the present Code are the scientific and logical ones. They are based on the nature not of the penalties but of the offences which are to be punished; and the delinquencies are classified according to their object and its relation to the common good. Those are first considered which may be committed by all the members of the Church and which contravene the more fundamental principles of the religious society; then those which are special to ecclesiastics and those which are less subversive of the social order.

4°. *Interpretation.* It is in the interpretation of this part of the Code that the rule given in the beginning of this fifth book finds chiefly its application: "In penalties the milder interpretation is to be adopted. It is not permitted to extend a penalty from person to person or from case to case even if there be the same or a greater reason." (Can. 2219.)

A more general principle, which has here also its application, is found among the general norms, in one of the first canons of the Code: "Canons which reproduce ancient laws without change ought to be understood in the sense of the ancient laws and according to the interpretation given of them by approved authors. Canons which agree only in part with the former law must be interpreted like the former law in what they have in common; but in the points which differ their meaning must be determined by their wording and context. When it is doubtful whether a prescription of the new law differs from that of the old one, the former law must be supposed unchanged." (Can. § 6, 2°, 3°, 4°.) This last clause, however, should not be applied too strictly; according to D'Annibale, in case of doubt the accused should be favored. (N. 389, 3.)

The present penal ordinances will be best understood by studying them in their sources and comparing them with the former legislation. Where they agree their meaning is fixed by the commonly received teaching of canonists; where they differ the modifications will reveal the mind of the legislator.

In this part then, because of the practical importance of the subject, and because of the necessity, in strictly penal matters, of weighing carefully every word of the law, each canon will be given in the original Latin. Side by side with it will be placed, for the purpose of comparison, some of the principal texts of the former legislation, particularly of the Constitution *Apostolicae Sedis,* which is better known and represents the most recent development of ecclesiastical penal discipline previous to the new Code.

TITLE XI

DELINQUENCIES AGAINST FAITH AND AGAINST THE UNITY OF THE CHURCH

191. Christian society is based on the power of teaching and ruling committed by Christ to His apostles and their successors, on belief in the revealed truths and submissions to a divinely instituted authority. Sins against faith, therefore, and disobedience which destroys unity tend to undermine the very foundations of the Church and are very properly the first delinquencies to be dealt with by the legislator.

I. APOSTASY, HERESY, SCHISM

(Decret. Greg. IX; Lib. V, tit. VII, VIII, IX; Wernz, n. 260, sq.; Catholic Encyclopedia, Apostasy, Heresy, Schism; Bingham, Antiquities of the Christian Church, Book XVI, chap. VI; Vacandard, The Inquisition, Longmans, 1908; J.

Guiraud, Questions d'histoire et d'archéologie Chrétienne, La répression de l'hérésie au moyen age, Paris, 1906.)

192. 1°. *Nature.* (*a*) Canonists distinguish several kinds of apostasy: *apostasia a fide,* rejection of the Christian faith; *apostasia a religione,* leaving the religious life; *apostasia ab ordine,* abandoning the ecclesiastical state; they call also apostasy the repetition of baptism and certain acts of disobedience. We are concerned here with apostasy properly so called, that is, apostasy *a fide,* which may be defined the complete abandonment of the Christian faith by a baptized person, whether he embraces another religion, such as Mohammedanism, Judaism, Buddhism, or becomes an unbeliever in any religion, a deist, rationalist, freethinker, materialist, or atheist. (Can. 1325, § 2.)

(*b*) Heresy is the partial rejection of the revealed truth by a baptized person. Heresy means choice. The heretic chooses among the teachings of revelation those which commend themselves to his approval and to them alone he gives his assent.

Formal heresy supposes the rejection of a truth proposed by the Church for our acceptance and known to be contained in the deposit of faith. If the truth was not known to be proposed by the Church for our belief, the heresy would be only material. If the truth was proposed by the Church but not as contained in the deposit of faith, to reject it would be an act of disobedience but not of heretical unbelief.

In matters of faith, doubt positively assented to is equivalent to negation.

193. (*c*) Schism etymologically means rent, division; St. Paul calls schisms the dissensions in the Church at Corinth. (I Cor. i. 10–12.) In the canonical sense of the term, a schism is the breaking up of ecclesiastical unity. The unity of the Church consists essentially in the union of the faithful with one another and with the Supreme Pontiff as the head of the spiritual body and the representative of Christ on earth. A schismatic, therefore, is one who, whilst claiming to remain a Christian, refuses to recognize the authority of the Pope or to communicate with the faithful who are subject to him. (Can. 1325.)

Often schism springs from heresy or implies the denial of some article of faith. Particularly since the definitions of the Vatican Council, schism almost invariably leads to the rejection of Papal infallibility, if it does not presuppose it. Still schism may exist without heresy and a man may, through pride, anger or malice, rebel against the authority of the Church and yet believe all that she teaches. Heresy is opposed to faith; schism is opposed to charity which binds all Christians together, and to obedience which demands submission to legitimate ecclesiastical authority. To constitute schism, however, the disobedience must include the denial of the superior's divine right to command. Any refusal to comply with the prescriptions or prohibitions of the Ordinary or of the Pope may be punished but not with the same penalties as schism. (Can. 2331.)

Nor is rebellion against a particular Bishop necessarily a schism. St. Ignatius says: "Where the Bishop is, there is the community" (Ad Smyrn. vii. 5); and St. Cyprian: "He is not in the Church who is not with the Bishop" (Epis. lxvi. 8); and, no doubt, it was so in those early days, when, practically, union with the Church was effected only through union with the local Bishop. Nevertheless, since the special position of the Bishop of Rome, in the Church, as center of unity, has been more strongly emphasized and better understood, whilst rebellion against the Bishop of the diocese will often be a step toward schism, it is possible for a man to reject the authority of his Ordinary and remain or claim to remain subject to the Holy See.

194. 2°. *Former discipline.* (*a*) Apostasy, a sin of all ages (I John ii. 18–19), was particularly frequent in times of persecution. Through fear, weak Christians denied their faith, sacrificed to idols or pretended to do so, and obtained from some official a certificate to that effect; the persecution over, they often repented and sought reconciliation with the Church. The reparation demanded for their offence varied according to the cases and also according to times and countries. (St. Cyprian, Epist. lii, n. 14, 15, Pat. Lat., t. 3, col. 781; Council of Ancyra, 313, can. 1–9; Elvira, 300, c. 1.) Full, deliberate apostasy is one of the sins which, for a time and at least in some places, were punished with perpetual penance, without hope of ecclesiastical absolution, even at the point of death, the forgiveness of the sin being left to God alone. (P. Batiffol, Etudes d'histoire et de théologie positive, Les origines de la pénitence, III, p. 111; Dictionnaire de Théologie Catholique, Apostasie; Dictionary of Christian Antiquities, Lapsi, Libellatici; Bingham, Ant. VI, ii, 4.)

Under the Christian emperors apostasy was considered as a crime against the State and punished as such. Justinian's Code deprives apostates of the right to bequeathe or inherit property, to give evidence in court; their possessions are to be confiscated. Any one who induces a slave or free man to apostatize may be condemned to death.

Since the Middle Ages both civil and ecclesiastical penalties have been the same for apostasy as for heresy.

195. (*b*) St. Paul directs his disciple Titus to have no intercourse with obstinate heretics (Titus, iii. 10); men who had made shipwreck concerning the faith he "delivered up to Satan that they may learn not to blaspheme." (I Tim. i. 19, 20.) This was in conformity with the precept of Christ Himself: "If he will not hear the Church let him be to thee like the heathen and the publican." (Matt. xviii. 17.)

From the beginning anti-heretical legislation is marked with special severity; heresy was looked upon as a deadly poison generated within the very organism of the Church and to be eliminated if the organism is to keep healthy and strong. Heretics, if they obstinately persevered in their sin, were invariably cut off from the communion of the faithful.

As long as the era of persecution lasted, only spiritual punishments could be devised for the repression of heresy. But when the Roman Emperors had become Christian, their conception of the State led them to assume the rôle of protectors of the Church and to put the secular arm at the service of orthodoxy. This implied the active prosecution of heretics. It has been calculated that not less than sixty-eight laws had been enacted against them in fifty-seven years. The penalties inflicted upon them were mainly exile, confiscation, inability to transmit property and, in particularly grave cases, death. (Vacandard, l.c. p. 9 sq.; Bingham, Book xvi, c. xvi,

n. 6.) While, in a measure, reaping the benefit of these strictures and, at times, positively approving them, the Church generally assumed no responsibility for them; most of the Bishops condemned the infliction of the death penalty for heresy. Ecclesiastical judges inflicted some corporal punishments of a lighter character, such as flogging and imprisonment in a monastery. Imprisonment for crime is of strictly ecclesiastical origin. At first it was used in monasteries, then clerics and finally laymen were subjected to it.

196. From the sixth century onward, the civil legislation against heretics ceased to be enforced except in a few places and for a short time; the ecclesiastical penalties rarely found application, especially during the eighth, ninth, and tenth centuries.

In the eleventh century the spread of a new form of Manicheism through the western countries of Europe made it necessary to take severe measures for the protection of both religious and civil society. It was also the occasion of excesses against which churchmen protested repeatedly. Princes began once more to pronounce sentences of death against heretics; but this did not as yet amount to a law or general practice. (Synod of Orleans, 1022; Julien Havet, L'hérésie et le bras séculier au Moyen Age jusqu'au treiziéme siécle, Paris, 1880.) Definite canonical laws were enacted by the Councils of this and the following century for the suppression of heresy. (Arras, 1025; Rheims, 1049; Toulouse, 1056, 1119; Lateran, 1130; Rheims, 1149; Lateran, 1179; Verona, 1184; Lateran, 1215.) Pope Innocent III was particularly active in enforcing this legislation. He classed heresy with treason and demanded that it be visited with the same punishments — excommunication, imprisonment, banishment with all its consequences, but not death.

In the thirteenth century the rapid progress of the Albigensian heresy, which became a serious menace to Church and State alike, caused great alarm throughout Christendom. In self-defence princes felt compelled to add to the severity of the already existing laws. Emperor Frederick II revived the decrees of his predecessors of the fourth and fifth centuries, the death penalty was substituted for banishment and the popular custom of burning heretics became a law of the empire. Popes Gregory IX and Innocent IV, considering these rigors a necessity, ordered the new legislation strictly enforced everywhere. (Const. *Cum adversus,* 1243.)

About the same time the Inquisition was organized for the prosecution of heretics.

197. In modern times, since the Reformation, the temporal punishments have gradually fallen into abeyance, but the spiritual ones — excommunication, irregularity, infamy — have remained. The anathemas pronounced by successive Councils against heretics were regularly renewed and completed in a special Constitution which it had become customary for the Popes to promulgate every year on Holy Thursday and which is, for this reason, called the *Bulla Coenae.* Julius II, in the *Bulla Coenae,* published March 1, 1511 (*Bullarium Romanum,* Editio Taurinensis, vol. v, p. 491, Torino, 1860), excommunicates, together with the Cathari, Patareni, Fratricelli, etc., all heretics, whatever be their name, their defenders and abettors. Paul III (*Bulla Coenae* April 13, 1535) anathematizes also by name Martin Luther and his followers, and he also condemns their works, forbidding the faithful to read them, to keep, print or defend them in any way. In the *Bulla Coenae* published by Gregory XIII, April 4, 1583, the penalty of excommunication is extended to persons who believe in heretics, the *credentes* excommunicated already by the fourth Lateran Council, 1215 (c. 3), to those who read the books of any heretics, Protestant or other, which defend heresy, to schismatics, to all who obstinately refuse obedience to the Pope, who appeal from the Pope to a General Council or who cooperate in such an appeal; colleges and universities guilty of this offence are placed under interdict.

The first *Bulla Coenae* to include explicitly apostates in the excommunication against heretics is that of Paul V, April 8, 1610, which otherwise does not differ from his predecessor's, Gregory XIII. Boniface VIII had decreed, in conformity with a long existing discipline, that Christians passing or returning to Judaism were to be treated as heretics (c. 13, v, 2, in Sexto); but the question was then raised whether apostates should also be considered as heretics when they do not join a false sect or profess a heretical doctrine. (Melchior Canus, De Locis Theologicis, Lib. xii, c. 7.) Paul III (Const. *Cum ex Apostolatus,* Feb. 15, 1559) had declared excommunicated those who "deviate from the Catholic faith or fall into some heresy" without putting an end to the controversy. This was definitely settled by substituting the formula "*a Christiana fide apostatas*" for "*a fide Catholica deviasse.*"

After Clement XIII, who died in 1768, it was not thought advisable, considering the conditions of the times, to continue the promulgation of the *Bulla Coenae,* but many of its provisions, particularly those regarding heretics, which had become laws, remained in force. They were retained, with some modifications, in the Constitution *Apostolicae Sedis* and in the Code, which they may, therefore, serve to interpret. (Avanzini, p. 59 ff.)

198. (*c*) Although schism occupies a less important place in the Church's legislation than heresy, it has always been condemned in the strongest terms and very severe penalties have been enacted against it. The principal ones were: excommunication, inability to acquire benefices and dignities in the Church (c. 5, x, i, 6), irregularity in notorious cases, loss of jurisdiction (c. 1, x, v, 8) and liability to be deprived of all offices, benefices and dignities already obtained.

199. 3°. *Present law*

Can. 2314, § 1. Omnes a Christiana fide apostatae et omnes et singuli haeretici aut schismatici:

1.° Incurrunt ipso facto excommunicationem;

2.° Nisi moniti resipuerint, priventur beneficio, dignitate, pensione, officio aliove munere, si quod in Ecclesia habeant, infames declarentur, et clerici, iterata monitione, deponantur;

3.° Si sectae acatholicae nomen dederint vel publice adhaeserint, ipso facto infames sunt et, firmo praescripto canonis 188, n. 4, clerici, moni-

Const. Apost. Sedis

C. A. S.—Excommunicationem latae sententiae S. Sedi speciali modo reservatam incurrunt:

1. Omnes a Christiana fide apostatae et omnes ac singuli haeretici, quocumque nomine censeantur, et cujuscumque sectae existant, eisque credentes, eorumque receptores, fautores, ac generaliter quilibet illorum defensores.

3.° Schismatici et ii, qui a Romani Pontificis pro tempore existentis obedientia se subtrahunt vel recedunt.

C. S. O., Feb. 19, 1916.—1. Absolutio ab ex-

tione incassum praemissa, degradentur.

§ 2. Absolutio ab excommunicatione de qua in §1, in foro conscientiae impertienda, est speciali modo Sedi Apostolicae reservata. Si tamen delictum apostasiae, haeresis vel schismatis ad forum externum Ordinarii loci quovis modo deductum fuerit, etiam per voluntariam confessionem, idem Ordinarius, non vero Vicarius Generalis sine mandato speciali, resipiscentem, praevia abiuratione iuridice peracta aliisque servatis de iure servandis, sua auctoritate ordinaria in foro exteriore absolvere potest; ita vero absolutus, potest deinde a peccato absolvi a quolibet confessario in foro conscientiae. Abiuratio vero habetur iuridice peracta cum fit coram ipso Ordinario loci vel eius delegato et saltem duobus testibus.

communicatione, qua quis ob haeresim vel apostasiam sit irretitus, in foro conscientiae impertienda, est speciali modo, secundum praescripta in Constitutione Apostolicae Sedis, Summo Pontifici reservata.

2. Si tamen crimen haeresis vel apostasiae ad forum externum episcopi aut praelati episcopalem vel quasi-episcopalem auctoritatem habentis, aut per spontaneam confessionem vel alio quovis modo deductum fuerit, episcopus vel praelatus sua auctoritate ordinaria resipiscentem haereticum vel apostatam, praevia abjuratione juridice peracta, aliisque servatis de jure servandis, in foro exteriori absolvere poterit. Absolutus autem in foro exteriori potest deinde absolvi a quolibet confessario in foro conscientiae absolutione sacramenli. Abjuratio vero juridice peracta habetur cum fit coram ipso episcopo vel praelato, aut eorum delegato et saltem duobus testibus.

200. A comparison between the two texts at once shows several differences:

(*a*) Schism is formally assimilated now to heresy and apostasy, in every respect, at least in regard to the penalties enacted in this canon.

(*b*) There is no distinction made, as formerly, between schismatics and persons who withdraw from obedience to the reigning Roman Pontiff. The latter, according to some canonists, would not have been schismatics in the strict sense of the term, and for schism proper, separation from both the head and the body of the Church would have been necessary. (D'Annibale, n. 390; Pighi, l.c., n. 15; Albizzi, De Lugo.) Commonly, however, it was held that one would really be a schismatic from the mere fact of refusing to recognize the authority of the Roman Pontiff, even if he claimed to remain united to the body of the faithful. The present Code, which defines a schismatic as " one who refuses to be subject to the Sovereign Pontiff *or* to communicate with the members of the Church who are subject to him " (can. 1325, § 2), has special punishments for Christians who obstinately disregard legitimate commands of the Roman Pontiff or of the Ordinary, but none for those who withdraw from the authority of the Pope, because, no doubt, these are considered as schismatics and punished as such.

(*c*) With heretics and apostates are not mentioned in this canon, as incurring the same penalties, their accomplices, defenders, abettors, supporters; these therefore do not directly come under this law any longer.

(*d*) The Constitution *Apostolicae Sedis* was concerned only with the censures *latae sententiae;* the Code contains also the vindictive penalties.

201. 4°. *Penalties now in force against apostates, heretics, schismatics.* (*a*) They incur, on the ordinary conditions of full guilt, knowledge, etc., an excommunication *latae sententiae* specially reserved to the Holy See in the same sense as formerly, which will be explained further on.

(*b*) If, after receiving an admonition, they do not repent, they ought to be deprived of any benefice, dignity, pension, office or other function they may have in the Church; they ought to be branded with infamy; and clerics, after another admonition, are to be deposed.

None of these penalties is *latae sententiae;* they should not even be inflicted until the obstinacy of the delinquent has been clearly manifested by refusal to heed a special admonition or two admonitions when it is question of a cleric and of his deposition.

(*c*) If they have become formally affiliated with a non-Catholic sect or publicly adhered to it, they incur *ipso facto* the note of infamy; clerics lose all ecclesiastical offices they might hold (can. 188, 4°), and after a fruitless warning they should be deposed.

These are substantially the vindictive spiritual penalties that had been enacted by Decretal law (9, 13, x, v, 7; 1, v, 2 in Sexto; 2, 15, v, 2 in Sexto), but at present they are all *ferendae sententiae* except one and they are clearly not incurred unless the delinquency be public.

202. 5°. *Remission of these penalties.* The vindictive penalties can be remitted in the usual way, as explained in a previous title.

In regard to absolution from the excommunication, the rule remains practically what it was before; this canon reproduces with only a few slight changes the declaration of the Holy Office which simply restated the law that had been in force for several centuries. A distinction is therein made between absolution in the internal and in the external forum.

(*a*) In the external forum.— When the Inquisition was established the Inquisitors received from the Popes authority to prosecute heretics, to punish them and also absolve them on repentance. (C. 11, v, ii, in Sexto.) As the Bishops are the natural defenders of the faith, it was concluded that they must have the same power. Official declarations soon recognized the legitimacy of this inference, and thus Bishops became competent, by common law, to judge and absolve heretics even in places where the tribunals of the Inquisition were organized and active. (Gennari, Consultations Théologiques, cix, p. 186.) It was further declared that they might absolve not only heretics who appeared before the episcopal court as defendants, but any one whose case would be brought before the Bishop, even by personal confession, provided it be in the external forum.

This power was never taken away from Bishops, not even by the *Bulla Coenae,* in spite of appearances to the contrary, and is exercised to the present day without any of the formalities of a formal trial; it is only demanded that the absolution be preceded by juridical abjuration, that is, abjuration in presence of the Ordinary or his delegate and at least two witnesses, and that the usual penances, obligations, injunctions be imposed on the delinquent, *servatis de jure servandis.*

All this pertains to the external forum; but absolution from censure in the external holds good also in the internal forum; and once the censure has thus been removed, any confessor can absolve from the sin of apostasy, heresy or schism, which is not reserved in itself.

The Bishop's power in this matter, being ordinary, can be delegated. In the United States it has been the custom to delegate it to priests, so that they may absolve converts and receive them into the Church without having to ask for faculties in every case. (Putzer, Commentarium in Facultates Apostolicas, n. 137, b.) The prelate from whom absolution may be obtained is the Ordinary of the place, as is specified in the present canon, and this includes besides the Bishop, the Vicar-Capitular, the Apostolic Administrator, but not the Vicar-General, who needs a special mandate, nor superiors of religious communities. (Can. 198.)

203. (*b*) Absolution in the internal forum.— The Council of Trent had granted to Bishops, in the celebrated *Caput Liceat* (Sess. xxiv, c. 6 de Ref.), the power to absolve from occult heresy and apostasy, in the internal forum; but it was taken from them by the *Bulla Coenae* (Bullarium, T. viii, p. 417, n. 23; T. vi, p. 223, n. 19), which according to the common interpretation of canonists reserved again all such cases to the Holy See. (Gennari, l.c. p. 185.) The reservation was maintained in the Constitution *Apostolicae Sedis* as it is now in the Code. (Can. 2314, § 2.)

In practice the confessor who meets with a possible or probable case of apostasy, heresy or schism, must examine first of all whether all the conditions are fulfilled for incurring the excommunication; whether there has really been a grave formal sin of unbelief or schism, both internal and externally manifested, whether ignorance may not excuse from the sin or censure. Should it appear certain that the excommunication was incurred, the confessor should examine further whether the case is not one of those in which absolution may be given without special faculties. It will occur very seldom in practice, concludes a canonist, that a confessor will be unable to absolve from occult heresy or schism.

Should it occur, however, he might suggest to the penitent to bring his case before the Ordinary, make juridical abjuration and obtain absolution in the external forum. If this suggestion could not be made or was not acceptable, the penitent might apply to the Holy See, that is, to the Sacred Penitentiary, for absolution or go to some confessor having the necessary faculties. The first confessor may also ask for them from one who can delegate them.

The Sacred Penitentiary gives to Ordinaries faculties to absolve, in *foro interno,* occult and even public heretics, provided they be not preaching heresy publicly — *dogmatizantes.* (Putzer, l.c. p. 225.) Converts from heretical or schismatic sects are, however, always absolved in *foro externo.* (Cf. Lehmkuhl, vol. ii, n. 696; Wernz, Jus Matrimoniale, n. 588, p. 451.)

For the Ordinaries of the United States these faculties to absolve from heresy and schism in the internal forum were included in the Formula I, n. 15; the Decree of the Sacred Consistorial Congregation, April 28, 1918, withdrew the faculties granted for the external forum, but those which are usually granted by the Sacred Penitentiary for the internal forum remained untouched.

II. SUSPICION OF HERESY

Can. 2315. Suspectus de haeresi, qui monitus causam suspicionis non removeat, actibus legitimis prohibeatur, et clericus praeterea, repetitia inutiliter monitione, suspendatur a divinis; quod si intra sex menses a contracta poena completos suspectus de haeresi sese non emendaverit, habeatur tanquam haereticus, haereticorum poenis obnoxius.

204. 1°. The suspicion of heresy is attached by the law itself to certain acts. Thus all who knowingly and willingly assist in the propagation of heresy or who take an active part in non-Catholic rites or even a passive part when there is danger of scandal or perversion (can. 2316); all who contract marriage with the implicit or explicit understanding that the children will be educated outside of the Catholic Church; who presume to offer their children to non-Catholic ministers for baptism; who knowingly have their children or wards educated in a non-Catholic religion (can. 2319); who desecrate the sacred Species (can. 2320); who appeal from the decrees of the reigning Roman Pontiff to a General Council (can. 2332); who obstinately remain for a year under excommunication (can. 2340); who are guilty of simony in the administration or reception of the sacraments (can. 2371); all these persons are *ipso facto* suspected of heresy.

A person's manner of acting or of speaking might also, independently of any special provision of the law, give rise in the mind of prudent people to the suspicion that he may not be sound in the faith. He would be suspected *de facto*. To be of any canonical value, the suspicion should be well grounded. When may it be considered so? It is for the superior who will give warning to the party concerned to judge. The suspicion has no canonical effect until the warning has been given.

205. 2°. If a person who is suspected of heresy does not, after being duly warned, remove the cause of the suspicion, supposing that it is morally possible to do so, he should be debarred from the legitimate acts. A cleric should receive a second warning, and if this too remained fruitless he should be suspended *a divinis.* After inflicting these punishments, six months more may be allowed, and if at the end of this time the party suspected of heresy has shown no signs of amendment, he is to be considered as a heretic and punished accordingly.

III. COOPERATION IN HERESY

Can. 2316. Qui quoquo modo haeresis propagationem sponte et scienter iuvat, aut qui communicat in divinis cum haereticis contra praescriptum can. 1258, suspectus de haeresi est.

Two main forms of cooperation with heretics are specified in this canon as creating *ipso facto* the suspicion of heresy: assisting in the propagation of heresy and communicating *in divinis* with heretics under certain conditions.

206. 1°. Under the former legislation, those who helped the spread of heresy were among the *fautores haereticorum,* who incurred the same excommunication as the heretics themselves. The penalty now is suspicion of heresy and the law more explicitly defines the circumstances under which it is incurred.

(*a*) The assistance must be given, not simply to heretics personally, but to the heresy so as to contribute to its propagation.

(*b*) It must be given knowingly and spontaneously; ignorance would excuse from any fault, and fear or any want of complete freedom, although not necessarily taking away all responsibility, would excuse from the punishment.

(*c*) The assistance may take any form: it may be negative or positive, consist in neglecting to prevent the progress of heresy when one is bound by his office to do so; or in positive help, moral or physical, praising and commending heretics and their work, orally or in writing; becoming even merely a nominal member of their societies, etc.

207. 2°. The communication *in divinis* with heretics dealt with here is the one explicitly condemned in canon 1258. (*a*) The faithful are forbidden to take any active part in non-Catholic rites, for example to act as godfather at a baptism administered by a non-Catholic minister, to join in the singing or the prayers at a Protestant service. (Lehmkuhl, i, n. 656, 658.)

(*b*) A merely passive or material presence at the marriages of non-Catholics, at their funerals and other similar solemnities, may be tolerated when it is nothing more than an act of courtesy, a mark of civil respect, the fulfilling of a social duty, and a grave reason justifies it. In case of doubt the Bishop should be consulted.

IV. TEACHING CONDEMNED DOCTRINES

Can. 2317. Pertinaciter docentes vel defendentes sive publice sive privatim doctrinam, quae ab Apostolica Sede vel a Concilio Generali damnata quidem fuit, sed non

C. A. S.— Excommunicationem latae sententiae S. Pontifici simpliciter reservatam incurrunt: Docentes vel defendentes sive publice, sive privatim, propositiones

uti formaliter haeretica, arceantur a ministerio praedicandi verbum Dei audiendive sacramentales confessiones et a a quolibet docendi munere, salvis aliis poenis quas sententia damnationis forte statuerit, vel quas Ordinarius, post monitionem, necessarias ad reparandum scandalum duxerit.

ab Apostolica Sede damnatas sub excommunicationis poena latae sententiae: item docentes vel defendentes tanquam licitam praxim inquirendi a poenitente nomen complicis, prouti damnata est a Benedicto XIV. in Const. *Suprema,* 7 Julii, 1745, *Ubi primum,* 2 Junii, 1746, *Ad eradicandum,* 28 Septembris, 1746.

208. 1°. By the Constitution *Apostolicae Sedis* the teaching or defending of condemned doctrines was punished with excommunication *latae sententiae* reserved to the Holy See; at present the punishment is *ferendae sententiae.* It will consist in excluding the offender from the ministry of preaching the word of God, hearing confessions, and teaching in any capacity. Other penalties may be added in the sentence of condemnation, and the Ordinary may, after giving due warning, demand whatever he deems necessary to repair the scandal.

2°. The excommunication was incurred by teaching or defending propositions which the Apostolic See had condemned under pain of excommunication *latae sententiae* or by maintaining the theory, proscribed by Benedict XIV, that it is lawful in confession to ask for the name of the accomplice.

The present canon (*a*) does not mention this last point.

(*b*) It supposes obstinacy in the teacher or defender of false doctrines, which implies disregard of warnings received.

(*c*) The false doctrine must, as formerly, be taught or defended. It is not necessary that it be held; the Church condemns the external act, whatever be the intimate convictions of the party. Nor is it sufficient that it be held or simply discussed or stated.

(*d*) It does not need being formulated into concise and scientific propositions as long as it has been condemned by the Holy See or a General Council; Holy See includes the Roman Congregations. (Can. 7.)

(*e*) It may have been condemned as false, dangerous, or rash, or without any qualification and sanction. If it had been condemned as formally heretical, teaching or defending it would imply heresy and be punished as such.

V. PUBLISHING, DEFENDING, READING CERTAIN BOOKS WITHOUT REQUIRED AUTHORIZATION

Can. 2318. § 1. In excommunicationem Sedi Apostolicae speciali modo reservatam ipso facto incurrunt, opere publici iuris facto, editores librorum apostatarum, haereticorum et schismaticorum, qui apostasiam, haeresim, schisma propugnant, itemque eosdem libros aliosve per apostolicas litteras nominatim prohibitos defendentes aut scienter sine debita licentia legentes vel retinentes.

§ 2. Auctores et editores qui sine debita li-

C. A. S.— Excommunicationi latae sententiae speciali modo R. P. reservatae subjacent: Omnes et singuli scienter legentes sine auctoritate Sedis Apostolicae libros eorumdem apostatarum et haereticorum haeresim propugnantes, nec non libros cujusvis auctoris per Apostolicas litteras nominatim prohibitos, eosdemque libros retinentes, imprimentes, et quomodolibet defendentes.

Anathematis poenae in decreto Conc. Trid., sess. 4, *De editione et usu Sa-*

centia sacrarum Scripturarum libros vel earum adnotationes aut commentarios imprimi curant, incidunt ipso facto in excommunicationem nemini reservatam.

***crorum librorum* constitutae, illos tantum subjacere volumus, qui libros de rebus sacris tractantes sine Ordinarii approbatione imprimunt aut imprimi faciunt.**

The present and former legislation here differ only in minor details. Their object and penalties they enact are substantially the same.

209. 1°. *Object.* Three classes of books are considered:

(*a*) To the first class belong the books of apostates, heretics, schismatics defending heresy or schism. Works written by other authors would not come under this law, even though they would defend heresy or schism; nor works of apostates, heretics or schismatics which would not contain heresy or schism or, at least, not defend it except perhaps in a few brief incidental statements. On the other hand to be considered as defending heresy or schism it is not necessary that a book should treat *ex professo* of religious subjects. The defence of heresy may be found in a book of philosophy, history, or science.

(*b*) To the second class belong the books of any author which have been forbidden by Apostolic Letters, that is, Letters published in the name and by authority of the Pope, such as Bulls, Briefs, Encyclicals, not simply by the Congregation of the Index or of the Inquisition; they must have been condemned nominally, by mentioning, not necessarily the name of the author — the work may be anonymous — but the title of the condemned book. This condition is not fulfilled in the case of a condemnation pronounced against all the works of a certain author without giving the title of any of them in particular.

(*c*) To the third class belong the books of the Scriptures or annotations and commentaries upon them, published without proper authorization.

The Council of Trent (Sess. iv) had decreed that the Sacred Scripture " be printed in the most correct manner possible; and that it shall not be lawful for any one to print, or cause to be printed, any books whatsoever, on sacred matters, without the name of the author; nor to sell them in future or even to keep them, unless they shall have been first examined and approved of by the Ordinary, under pain of the anathema and fine imposed in a canon of the last Council of Lateran." The Constitution *Apostolicae Sedis* restricted the excommunication to those who print or cause the books to be printed. Like the Council, it used the expression " books treating of sacred things " but the context showed, and the Holy Office explicitly declared (Dec. 22, 1880), that by this only the Sacred Scriptures were meant. Hence in the Constitution *Officiorum et Munerum* (Jan. 25, 1897, art. 48) the formula adopted was: " *Qui sine Ordinarii approbatione Sacrarum Scripturarum libros . . .*" as in our canon.

210. 2°. *Penalties.* (*a*) An excommunication *latae sententiae* reserved to the Pope in a special manner is incurred by persons who edit the books of the first class.

The editor may be the author himself or the printer or a third party. Those who print the books do not as such come any more under this law.

The penalty is incurred when the book is offered to the public, for sale or gratuitously; but not as long as it remains in manuscript form or is circulated only privately. To incur it the editor must know the character of the book either from its author or from its contents.

This law does not apply to the publication of newspapers, periodicals, leaflets, pamphlets, brief addresses; these are not books. (H.O. Apr. 21, 1880; Jan. 13, 1892; Noldin, De Praeceptis, n. 690.)

211. (*b*) The same excommunication reserved to the Holy See is incurred by persons who defend the books belonging either to the first or to the second class and by those who, without due authorization, knowingly read or keep the same books.

One may defend or protect a book materially, for example, by saving it from destruction, or morally, by refuting arguments directed against it, praising its doctrine, commending it, etc.

Listening to another who reads is not considered, in this matter, as reading, nor is material reading without understanding.

It is against the law to keep the books here in question, even if they are not to be read or if their language is not understood, or to keep them for another to whom they belong, or to deposit them with another person, unless the latter have permission to keep such books and it be understood that the owner is not to claim them back until he has obtained the same permission. (Noldin, De Praeceptis, n. 691; Lehmkuhl, ii, n. 924.)

The penalty would not be incurred if the books were kept only a very short time or whilst waiting for an opportunity to hand them over to the superior or pending the answer to an application for authorization to read them. A servant might keep them for his master who is allowed to use them; a librarian is not keeping, in the sense of the present law, the books contained in the library of which he has charge.

It is to be noted that the excommunication is incurred by those who knowingly keep or read the prohibited books; ignorance of the law or of the penalty would excuse, provided it be not affected. The same full knowledge is not required in the editors or defenders.

212. (*c*) An excommunication reserved to no one is incurred by editors of the Sacred Books and by authors or editors of annotations or commentaries on the Bible, who publish them without due authorization.

The text may be strictly correct, the translation faithful and the commentary in every respect orthodox, yet the penalty will be incurred if the publication has not been authorized by competent superiors. (Can. 1385, § 1; 1391.) It is incurred now only by the editors and the authors who have some responsibility in the publication of their translation or explanations, not by the printers, readers, owners, etc.

VI. FAVORING HERESY

Can. 2319. § 1. Subsunt excommunicationi latae sententiae Ordinario reservatae catholici:

1.° Qui matrimonium ineunt coram ministro acatholico contra praescriptum can. 1063, § 1;

2.° Qui matrimonio uniuntur cum pacto explicito vel implicito ut omnis vel aliqua proles educetur extra catholicam Ecclesiam;

3.° Qui scienter liberos suos acatholicis ministris baptizandos offerre praesumunt;

4.° Parentes vel parentum locum tenentes qui liberos in religione acatholica educandos vel instituendos scienter tradunt.

§ 2. Ii de quibus in § 1, nn. 2–4, sunt praeterea suspecti de haeresi.

The excommunication *latae sententiae* reserved to the Ordinary enacted in this canon is, in its present form, new. The offenders against whom it is directed were, under the former legislation, at least in some cases if not all, classed with the heretics and their accomplices. They are:

213. 1°. Catholics who contract marriage before a non-Catholic minister against the prescriptions of canon 1063.

(*a*) By the canon here referred to Catholics are forbidden, even when they marry a non-Catholic after obtaining from the Church a dispensation from the impediment of mixed religion or disparity of cult, to go, whether before or after their marriage before the priest, personally or through a representative, to a non-Catholic minister, in the exercise of his functions, for the purpose of giving or renewing their matrimonial consent. If the non-Catholic minister acted as a purely civil magistrate, it would not be forbidden to go to him to comply with the civil formalities of the contract. If he received the couple in his house or some such place, without any of the insignia of his office, and addressed to them words of congratulation or advice having no confessional character, he would not be, strictly speaking, acting as a minister of religion.

(*b*) It was the teaching of ancient canonists, confirmed by several decisions of Roman Congregations (H. O. Mar. 9, 1842; Feb. 17, 1864), that Catholics who go before a non-Catholic minister to contract marriage are accomplices of heretics and incur the penalties pronounced against them. That it continued to be so after the publication of the Constitution *Apostolicae Sedis* seemed not so clear to some, but all possibility of doubt was soon removed by the declarations of the Holy Office (Mar. 17, 1874; Mar. 22, 1879; Aug. 29, 1888; May 11, 1892); hence, for the absolution and reconciliation of such Catholics the same faculties and the same juridical abjuration were required as for the absolution and reconciliation of heretics. (Wernz, Jus Matrimoniale, n. 588.)

(*c*) Under the present law the penalty will be excommunication but it is reserved only to the Ordinary (as by III Plen. Coun. Balt. n. 127); the offence remains an act of cooperation with heresy, but it is not punished any longer like heresy itself. In absolving from it, juridical abjuration is not required at present by common law; absolution *in foro interno* may, strictly speaking, be sufficient; but since the sin was public, an external public reparation may be exacted, or even should be exacted if this was necessary to avoid scandal. Inculpable ignorance excuses from this as from other censures, but in the external forum it is not presumed.

214. 2°. Catholics who marry with the understanding, explicit or implicit, that all or some of their children will be educated outside the Catholic Church.

(*a*) When dispensation from an impediment of mixed religion or disparity of cult is granted by the Church, it is always on condition that the non-Catholic party will promise to have all the children brought up Catholics. For the Catholic party to consent, even under some pressure, to have a single one of the children educated outside the Church, would be another act of cooperation with heresy which, according to the common teaching of canonists, was formerly punished with the same excommunication as heresy itself.

(*b*) The present excommunication reserved to the Ordinary is incurred, not when the agreement is entered into, but when the marriage is contracted with such an agreement. The understanding or agreement may be only implicit, as, for example, if the Catholic party promised not to oppose the wishes of the other in regard to the education of the children; or to conform to the custom of the place, which happens to be that the boys be educated in the religion of the father and the girls in that of the mother.

215. 3°. Catholics who knowingly presume to present their children to non-Catholic ministers for baptism.

Even if there is no reason to fear for the validity of the sacrament, this has always been condemned by the Church as "an act of criminal schism and manifest prevarication; so much so that an ancient Council orders that if any Catholic offered his children to be baptized by heretics, his oblation should not be received in the church. This was in effect to punish him with excommunication as an encourager of heretics and a divider of the unity of the Church." (Bingham, Book xvi, c. 1, sect. 4.)

The present excommunication is incurred (*a*) by the parents; the law speaks of those who offer their children, it does not apply therefore to other persons who would be responsible for baptism by a non-Catholic minister of children who would not be their own.

(*b*) It supposes full knowledge, *scienter*, that is, knowledge of the law, of the censure attached to it, and of the fact that the person to whom they apply is a non-Catholic minister.

(*c*) Presumption is also required and consequently complete freedom.

216. 4°. Catholic parents or persons holding the place of parents who knowingly hand over their children to be educated in a non-Catholic religion.

(*a*) In this case the law applies not only to parents but also to whosoever holds their place as legally appointed guardian or otherwise acting *de facto* in place of parents.

(*b*) To incur the censure they must act *scienter* and know that the school to which they send the children is a sectarian school which does not even attempt to observe neutrality. Ignorance, even crass and supine, would excuse from this excommunication.

(*c*) But it is not necessary that they act with presumption, *praesumentes,* as in the preceding case. Grave fear would not excuse from the censure.

The offenders of the second, third and fourth class incur besides the note of heresy.

TITLE XII

DELINQUENCIES AGAINST RELIGION

I. PROFANATION OF THE SACRED SPECIES

Can. 2320. Qui species consecratas abiecerit vel ad malum finem abduxerit aut retinuerit, est suspectus de haeresi; incurrit in excommunicationem latae sententiae specialissimo modo Sedi Apostolicae reservatam; est ipso facto infamis, et clericus praeterea est deponendus.

217. 1°. Innocent XI, in the Constitution *Ad nostri Apostolatus* (Mar. 12, 1677) decrees that any one stealing the sacred Species or keeping or carrying them away, should be punished as he deserves; and, unless it be proved that the act was not performed with an evil intent, should be handed over to the secular arm. This meant ordinarily condemnation to death. Profanation of the sacred Species was chastised as an attack on the person of Our Lord in the Sacrament of the Holy Eucharist.

The legislation of Innocent XI was confirmed and completed by several of his successors (Alexander VII, *Cum alias,* Dec. 22, 1690; Benedict XIV, *Ab augustissimo,* Mar. 5, 1744; Clement XIII, *Gravissimum,* Mar. 6, 1759); they added amongst other things that the profanation would be complete enough to incur the penalty without the circumstance of theft, if the other conditions are fulfilled, and that if the criminal was a cleric he should be degraded.

218. 2°. In the present state of society civil rulers cannot be depended on to punish sacrilegious deeds, nor can the Church use temporal punishments against the criminals; but to manifest her horror for the crime she has recourse to the severest penalties at her disposal and decrees that all persons throwing away the consecrated Species, or carrying them off or keeping them for an evil purpose, become suspected of heresy, incur an excommunication *latae sententiae* reserved to the Pope in a very special manner, incur infamy *ipso facto,* and if they are clerics they should be deposed.

219. 3°. The crime may be committed and the penalties may be incurred in two ways, as explicitly defined in this canon:

(*a*) By throwing away the sacred Species, that is, throwing them with contempt into some place where they will be exposed to profanation; as if a thief carrying away the ciborium would drop the sacred Species on the floor of the church, on the street where they are liable to be trodden under foot. They would not be thrown away if they were left on the table of the altar where they will be found by the priest.

The mere fact of throwing away the sacred Species is sufficient independently of the intention of the agent.

(*b*) By carrying them off, as when one after receiving holy communion would take the Sacred Host out of his mouth and carry it home in the handkerchief; or by retaining them, as when one would keep the Host thus brought to him until it be used for an unlawful end. An evil purpose is required here for incurring the penalties; but it is not necessary that those who take away or keep the sacred Species should intend to make a bad use of them. It suffices that they know such is the intention of the one for whom they have carried off or retained them. (Catholic World, Ap. 1919, p. 22.)

II. SAYING MASS TWICE IN THE DAY OR AFTER BREAKING THE FAST

Can. 2321. Sacerdotes qui contra praescripta can. 806, § 1, 808 praesumpserint Missam eodem die iterare vel eam celebrare non ieiuni, suspendantur a Missae celebratione ad tempus ab Ordinario secundum diversa rerum adiuncta praefiniendum.

220. 1°. The practice of daily Mass became universal about the fifth and sixth centuries. In the seventh the custom was introduced in some places for priests to say two, three or more Masses in the day. (S. Many, Praelectiones de Missa, n. 24, Paris, 1903.) This gave rise to some abuses; hence it became forbidden to say more than three and a little later more than one Mass a day. (Salegunstadt, 1023, c. 5; Alexander II, 1061–1073.) The Council of Lambeth (1213, c. 3) forbids the saying of more than one Mass a day under pain of suspension. An exception was made for Christmas Day and later on, in some places, for the second of November. Pope Benedict XV extended this last privilege to the whole Latin Church by the Constitution *Incruentum,* August 10, 1915.

By the present law: " The priest is not allowed to say Holy Mass more than once a day, except by Papal Indult or by permission of the local Ordinary. On Christmas and on All Souls' day, permission is given to say three Holy Masses."

221. 2°. The obligation of the Eucharistic fast, whether before Mass or holy communion, was introduced at a very early date by custom and then confirmed by formal law. (Hippo, 393, c. 37; Const. 696.) Several sanctions were added to it by particular Councils: privation of office (Bracara, 572, c. 10), excommunication. (VII Toledo, c. 2.)

In the Code the obligation of fasting before Holy Mass is thus expressed: " The priest is not allowed to celebrate unless he has observed the natural fast from midnight." (Can. 808.) Canonists and moralists explain in detail what this fast consists in, how it is broken, and also the cases in which an exception is made to the law of fasting. (Tanquerey, n. 165; P. Gasparri, Tractatus Canonicus de Sanctissima Eucharistia, Paris, 1897, n. 448, ff.)

222. 3°. The penalty for violating this legislation is, at present, suspension from saying Mass, to be pronounced by the Ordinary, for a longer or shorter period according to circumstances.

As presumption is supposed, any cause lessening the responsibility would excuse from the punishment. Thus a priest who would have some, although insufficient, reason for saying Mass after breaking the fast, would not come under this law, which has in view fully deliberate and free offences implying disregard and contempt for the prescriptions of the Church.

III. SIMULATION OF PRIESTLY POWERS

Can. 2322. Ad ordinem sacerdotalem non promotus:

1.° Si Missae celebrationem simulaverit aut sacramentalem confessionem exceperit, excommunicationem ipso facto contrahit, speciali modo Sedi Apostolicae reservatam; et insuper laicus quidem privetur pensione aut munere, si quod habeat in Ecclesia, aliisque poenis pro gravitate culpae puniatur; clericus vero deponatur;

2.° Si alia munia sacerdotalia usurpaverit; ab Ordinario pro gravitate culpae puniatur.

223. 1°. In Decretal law it was provided that a cleric baptizing or exercising the functions of an Order which he had not received, would be deposed and excluded from any further ordination. A deacon presuming to say Mass was deposed from his Orders for two or three years and debarred from the priesthood. (C. 1, 2, x, v, 28.) Clement VIII, renewing previous decisions of Paul IV and Sixtus V, decreed that any one who, not being a priest, would attempt to say Mass or administer the sacrament of penance, would be deprived of the privilege of the ecclesiastical court, degraded if a cleric, and handed over to the secular arm to receive the punishment due to his crime. (*Etsi alias,* Dec. 1, 1601.) Benedict XIV added that these penalties would be incurred by the first offence, even if only part of the Mass had been gone through and the words of the consecration omitted, as long as the portion gone through included at least one elevation. If the offender had stopped before the elevation he was to be treated more leniently and his punishment left to the prudence and discretion of the judge. The same concession was made in favor of one who, having heard confessions without being ordained, could prove that he had not pronounced the words of absolution.

224. 2°. The present canon pronounces (*a*) against any one who, not being a priest, simulates the celebration of Mass and the hearing of sacramental confessions, an excommunication *latae sententiae* reserved to the Holy See in a special manner; if he is a layman he should be deprived of any pension or function he might have in the Church; if a cleric he is to be deposed. Other punishments may also be added according to the gravity of the crime.

The law speaks of one who is not a priest. It would not apply to one who being a priest would have been forbidden to say Mass, nor to a priest who would go through the ceremonies of Mass in order, for example, not to give scandal but without intending to celebrate and perhaps omitting the words of consecration.

A distinction is made at times by theologians between simulation and fiction, but here simulation no doubt includes any external way of acting by which the faithful must be induced to believe that Mass is being said and sacramental confessions are heard, when it is not so in reality. It does not seem to make any difference whether the words of consecration or of absolution are pronounced or not. If the ceremony did not go as far as the elevation, the simulation might not be complete enough to incur the full penalty; but in regard to the sacrament of penance the legislator intends to punish not so much those who pretend to give absolution as those who pretend to receive sacramental accusations.

(*b*) Against those who, not being priests, usurp some of the other sacerdotal functions, no penalties are specified in law. It is only enacted that they ought to be punished by the Ordinary according to the gravity of the offence.

(*c*) Nothing is said here of those who usurp the functions of lower Orders.

IV. BLASPHEMY AND PERJURY

Can. 2323. Qui blasphemaverit vel periurium extra iudicium commiserit, prudenti Ordinarii arbitrio puniatur, maxime clericus.

1. Blasphemy

225. 1°. *Notion and species.* Blasphemy is defined a contumelious speech against God; it may be implicit or explicit; the dishonor of God may be intended directly or only permitted; the insult may contain a heresy or only imprecations; it may be immediately against God; or only mediately, affecting directly some creature that has a particularly close relation to God. It is a disputed question among canonists whether blasphemy against the saints, or mediate blasphemy, is specifically the same as blasphemy against God. Pius V, after enumerating the penalties to be inflicted on blasphemers against God, Christ and the Blessed Virgin Mary, leaves it to the discretion of the judge to determine the punishment for blasphemy against other saints. (Const. *Cum primum,* Ap. 1, 1566.)

226. 2°. *Punishment.* In Leviticus, xxiv, 16, blasphemy is punished with death. In the early ecclesiastical legislation there are no special enactments against blasphemy and very few down to the time of Gratian, either because the sin was rare or because it was generally connected with other crimes like apostasy and punished together with them.

The Roman law and later on the Frankish Capitularies deal with it very severely. In the Justinian Code, blasphemy is reckoned a capital offence and treated accordingly. Gregory IX (1236) imposed upon blasphemers various penances, fastings, fines, exclusion from the Church and refusal of Christian burial. The fifth Lateran Council added loss of benefices and dignities and imprisonment (Leo X, Const. *Supremae dispositionis,* May 5, 1514); if the blasphemer was a cleric, Pius V pronounced against him privation of benefices, exile, and, in case of obstinacy, verbal degradation.

All these penalties gradually fell into desuetude and in practice it was the ecclesiastical judge who determined in each case the punishment to be inflicted. This is the law at present. Blasphemers and perjurers ought to be punished, particularly if they are clerics, but the form of punishment is left to the decision of the Ordinary.

2. PERJURY

227. 1°. *Notion and species.* Perjury is the malicious violation of an oath; affirming under oath what is known to be false, or promising what one has no intention of doing. Like the oath, the perjury may be assertory or promissory, judicial or extra-judicial, public or private, simple or solemn, written or oral. The present canon deals only with extra-judicial perjury.

2°. Perjury, condemned by divine, natural and positive law, was punished also by civil and ecclesiastical authority. St. Basil informs us that a perjurer was allotted eleven years' penance. In some later Penitentials the punishment is proportioned to the offender's rank. A perjured layman had to do penance for three years, a cleric five, a sub-deacon six, a deacon seven, a priest ten. (Dictionary of Christian Antiquities, 1620.)

Particular councils enacted various penalties against perjury. They varied considerably in nature and gravity and were all *ferendae sententiae*. There were no censures *latae sententiae* against it either in the ancient law or in the Constitution *Apostolicae Sedis*. The present law leaves its punishment entirely to the prudence of the Ordinary.

V. VIOLATION OF LAWS REGARDING MASS STIPENDS

Can. 2324. Qui deliquerint contra praescriptum can. 828, 840, § 1, ab Ordinario pro gravitate culpae puniantur, non exclusa, si res ferat, suspensione aut beneficii vel officii ecclesiastici priva-

C. A. S.— Excommunicationem latae sententiae R. P. simpliciter reservatam incurrunt:

Colligentes eleemosynas majoris pretii pro missis et ex iis lucrum captantes, faciendo eas celebrari in locis ubi missarum stipendia minoris pretii esse solent.

"Ut debita," C. C. May 11, 1904: "Qui statuta . . . quomodolibet aut quovis praetextu perfringere ausus fuerit, si ex ordine sacerdotali sit, suspensioni a divinis S. Sedi reservatae et ipso facto incurrendae obno-

tione, vel, si de laicis agatur, excommunicatione.

xius erit; si clericus sacerdotio nondum initiatus suspensioni a susceptis ordinibus pariter subjacebit, et insuper inabilis fiet ad superiores ordines assequendos; si vero laicus excommunicatione latae sententiae Episcopo reservata obstringetur.”

228. 1°. The prescriptions referred to in this canon are the following: Any kind of negotiation or trading in stipends for Masses must absolutely be avoided (can. 827); as many Masses must be celebrated and applied as there were stipends, even small ones, offered and accepted (can. 828); he who transmits to others stipends for manual Masses, must transmit the stipends as he received them unless the giver expressly permitted him to retain a portion of them or unless it be certain that what was offered above the regular diocesan stipend was given in view of the person, that is, for special personal reasons. (Can. 840, § 1.)

229. 2°. Collecting stipends for Masses and making profits out of them by having the Masses celebrated in places where the stipends are not so high, had been strictly forbidden by Benedict XIV (*Quanta cura,* Jun. 30, 1741) under pain of suspension for clerics and of excommunication for laymen. In the Constitution *Apostolicae Sedis* the penalty became the same for all.

Subsequent decrees of the S. C. C. condemned other practices which had at least the appearance of traffic in Mass stipends. (Sept. 9, 1874; *Vigilanti,* May

25, 1893; *Ut debita,* May 11, 1904.) It was forbidden particularly to give stipends for Masses to booksellers, merchants and managers of magazines, who collected them and sent their goods instead of the money to priests who said the Masses; to pay for books or church furniture or anything else by saying Masses; to subtract anything from, or give anything in place of, the stipend which has been received for Mass. Violation of these rules was punished with excommunication reserved to the Ordinary if the offender was a layman, with suspension *a divinis* if he was a priest, and, if a cleric, suspension from the Orders received and inability to be promoted to higher ones.

230. 3°. Whatever has even the appearance of trading in stipends for Masses remains forbidden under the present law and Ordinaries are directed to punish offenders according to the gravity of their fault, using even such penalties as suspension from office or benefice and, in the case of lay persons, excommunication, if the abuse calls for such severe measures. But the choice of the punishment is now left to the judgment of the Ordinary. In appreciating the gravity of the fault and determining the penalty to be applied, he will, no doubt, be guided by the provisions of the former legislation. (Gasparri, De Eucharistia, n. 600; S. Many, S.S. De Missa, n. 100; Gennari, Cons. Mor. 55.)

VI. SUPERSTITION AND SACRILEGE

Can. 2325. Qui superstitionem exercuerit vel sacrilegium perpetraverit, pro gravitate culpae ab Ordinario puniatur, salvis poenis iure statutis contra aliquos actus superstitiosos vel sacrilegia.

231. 1°. The early Councils frequently refer to remnants of pagan or Jewish superstition among Christians. With the coming of the Germanic nations into the Church, new forms of superstition were brought in, against which the Councils and Penitentials multiply condemnations and punishments. (I Syn. of St. Patrick, 450, c. 16; Narbonne, 589, c. 14, 15; XVI Toledo, 693, c. 2; Paderborn, 785 c. 6.) Much of that legislation was incorporated in Gratian's Decree (C. xxvi, q. 1–5) or in the Decretals of Gregory IX. (V, 21.)

The subsequent authentic collections contain no new decretals on the subject, and although the evil, without doubt, still existed, the need was not felt for some time of further general measures to repress it. But from the fourteenth century onward, the multiplication of abuses called forth a number of Papal Constitutions and solemn condemnations. (Sixtus IV, *Nunciatum est,* 1474; Innocent VIII, *Summis desiderantes,* 1484; Leo X, *Honestis,* 1521; Lib. v, Tit. 12.) During the course of the sixteenth and seventeenth centuries numerous condemnations to death for witchcraft were pronounced, but the witch-trials were for the most part in secular hands. (Kittredge, Notes on Witchcraft, Worcester, Mass., 1907; Baissac, Les grands jours de la sorcellerie, Paris, 1900; Catholic Encyclopedia, Witchcraft.)

In the eighteenth century, the Church had to pronounce on superstitious rites among the Japanese, Chinese, and Hindoo Christians (Benedict XIV, *Ex quo singulari,* Jul. 11, 1742; *Omnium,* Sept. 12, 1744), and in the nineteenth on superstitious practices connected with magnetism and spiritism.

232. 2°. The penalties enacted in the ancient ecclesiastical legislation against superstition and sacrilege had, in modern times, come to be all *ferendae* *sententiae* and more rarely applied; not a few of them had ceased by custom to be any longer in force.

The present law does not specify any punishment for superstition or sacrilege in general, but only directs Ordinaries to inflict such as will be proportioned to the gravity of the offence except in those particular cases in which the penalty is determined by law.

VII. SPREADING FALSE RELICS

Can. 2326. Qui falsas reliquias conficit, aut scienter vendit, distribuit vel publicae fidelium venerationi exponit, ipso facto excommunicationem Ordinario reservatam contrahit.

233. 1°. The well-known popular devotion to the relics of saints often gave rise to the temptation, not always resisted, to satisfy it by fraudulent means or to exploit it for pecuniary advantages.

Already in the days of St. Augustine were seen impostors going about in the habit of monks and having "for sale members of martyrs, if they were martyrs." (De Op. Mon. xxviii, 36.) Similar frauds are denounced in the sixth century by St. Gregory the Great (Epist. iii, 30) and by St. Gregory of Tours. (Hist. Franc. ix, 66.) "At the beginning of the ninth century the exportation of the body of martyrs from Rome had reached the dimensions of a regular commerce." (J. Guiraud, Commerce des Reliques, Mélanges G. B. de Rossi, 73–95, Rome, 1892; Catholic Encyclopedia; Dictionary of Christian Antiquities, Relics.) In modern times if the fraud has been practised much less openly and not on so large a scale, examples of it have not, however, become entirely unknown.

234. 2°. The Church has not only always condemned such abuses, but tried to prevent them by taking all possible means to secure the faithful against error or deception. (Coun. of Trent, Sess. xxv.)

Renewing former prescriptions, the Code decrees that: Only those relics may be exposed to public veneration in any church which are authenticated by a Cardinal or the Bishop of the place or some other ecclesiastic to whom this power has been granted by Apostolic indult (can. 1283); the local Ordinaries should prudently withdraw from the veneration of the public relics which they know are not authentic (can. 1284); if the document of authentication of sacred relics has been lost, they should not be exposed for public veneration until the Ordinary of the place has passed judgment on them (can. 1285); it is forbidden to sell sacred relics. (Can. 1289.) The present canon adds besides the penalty of excommunication *latae sententiae* reserved to the Bishop to be incurred by those who manufacture false relics, or knowingly sell or distribute or expose them for the public veneration of the faithful.

235. 3°. The censure is new and affects four classes of persons: (*a*) Those who manufacture false relics, for example, one who would write a letter with his own hand and pass it off as an autograph of a saint; or one who would take a piece of ordinary cloth, enclose it in a case, seal it and give it as a portion of a saint's garment so that it may be exposed to public veneration.

(*b*) Those who sell relics which they know to be false. Selling true relics is also forbidden, but does not come under this law. The malice of the offence which the legislator has in view here, consists in propagating relics which are not genuine. Knowledge is required and even crass ignorance would excuse from the censure.

(*c*) Those who distribute false relics, whether gratuitously or in exchange for something else.

(*d*) Those who expose them for public veneration, whatever be the way in which they came into their hands. This is the abuse which the legislator has mainly in view; the others are punished principally because they lead to this one. Knowledge is required here also; doubt about the genuineness of the relics would not suffice to incur the censure.

VIII. TRAFFIC IN INDULGENCES

Can. 2327. Quaestum facientes ex indulgentiis plectuntur ipso facto excommunicatione Sedi Apostolicae simpliciter reservata.

C. A. S.— Omnes qui quaestum facientes ex indulgentiis aliisque gratiis spiritualibus excommunicationis censura plectuntur Constitutione S. Pii V, Quam plenum, Jan. 2, 1569.

236. 1°. Almsgiving may very legitimately be set down as one of the good works required for gaining an indulgence. This has often been done by the Church, particularly since the days of Pope Urban II, who took this means to secure the support of the Christian world for the Crusade. But the danger is that the offering made for pious purposes may be looked upon by the ignorant as the price of the indulgence, or that to the granting of indulgences may be given by incautious officials the appearance of a business transaction.

It soon became the custom for Popes and Bishops to entrust the publication of indulgences and the collecting of the offerings to itinerant preachers, known as *praedicatores quaestuosi* or *quaestores,* questors, collectors, pardoners. The fourth Lateran Council (1215, c. 62) recommends to the questors discretion and modesty, but complains thus early that some have not kept within the limits of truth in their preaching; therefore it prescribes a form which they should use in offering the spiritual favors and inviting the generosity of the faithful. A century later Clement V in the Council of Vienna (1311, Clement V, ix. 2) has again to rebuke questors and in much severer terms. Abuses continued and furnished one of the pretexts for the revolt of the sixteenth century.

The Council of Trent, seeing that the remedies prescribed by the Councils of Lateran, Lyons and Vienna against the wicked abuses of questors have become useless and that they persevere in their nefarious practices, ordains that the name and methods of questors shall be utterly abolished in all parts of Christendom. The indulgences or other spiritual graces of which the faithful should not be deprived, shall henceforth be published by the local Ordinaries, to whom also power is given to gather faithfully the alms offered them, without receiving any remuneration, so that all men may at last truly understand that these heavenly treasures are administered not for gain but for godliness. (Sess. xxi, c. ix.)

Some questors having kept carrying on the same unlawful trade under the pretext of special privileges, St. Pius V issued the Constitution *Etsi Dominici,* February 8, 1567, in which he formally canceled all concessions of indulgences involving money transactions *pro quibus consequendis manus sunt porrigendae adjutrices.* (Pennacchi, p. 925 ff.)

237. 2°. Shortly after this the report came to the same Pontiff that in some parts of the Church a price had still to be paid for indulgences and several other spiritual favors. It was then that he published the Constitution *Quam plenum,* January 9, 1569, in which he declares that Bishops or prelates of higher rank, even Cardinals, who are guilty of such abuses incur the interdict from entering the church and the privation of all the fruits of their churches till they have made sufficient reparation. Other persons incur an excommunication reserved to the Pope.

In the Constitution *Apostolicae Sedis* only the excommunication enacted by Pius V was renewed, not the other penalties; it affected the same persons and on the same conditions, that is, those, Bishops and other prelates of higher rank not included, who trafficked in indulgences and other spiritual favors enumerated in the Constitution of Pius V.

238. 3°. The same excommunication is maintained in the present law but restricted in one respect and extended in another.

(*a*) It applies now only to those who traffic in indulgences; other spiritual favors are not mentioned.

(*b*) But it is not restricted to persons of lower rank, at least not explicitly or in any special manner.

(*c*) Commonly it is taught that some profit should be derived from the granting or publishing of the indulgences to incur the censure; *quaestus* implies negotiation for the purpose of gain; still it may exist without gain, and the censure may be incurred before the price agreed upon be paid.

IX. VIOLATION OF CORPSES OR GRAVES

Can. 2328. Qui cadavera vel sepulcra mortuorum ad furtum vel alium malum finem violaverit, interdicto personali puniatur, sit ipso facto infamis, et clericus praeterea deponatur.

239. 1°. In Roman law the robbing of graves or spoiling of monuments of the dead was one of the capital crimes, *atrocia crimina,* prosecuted with fines, tortures, exile, and death. (Bingham, Book xvi, c. vi, n. 24.)

Among Christians St. Gregory of Nyssa tells us that the violation of burial places had to be expiated by the same term of public penance as fornication, that is, nine years. This applied, he says, to the crime of those who raked into the ashes of the dead and disturbed their bones, in pursuit of treasure, clothes or other ornaments that might be buried with them. The fourth Council of Toledo decreed (c. 45): "If any cleric is apprehended demolishing sepulchers, for as much as this is a crime of sacrilege punishable with death by the public laws, he ought by the canons to be deposed from his Orders and after that do three years' penance for this his transgression."

As in the time of Boniface VIII certain practices were being introduced which interfered with the bodies of the dead, this Pope forbade them under pain of excommunication. (C. 1 De Sepulturis, III, 6, in Extrav. Comm.)

In modern times the Church has condemned cremation and the societies established to promote its practice. (H. O. May 19, 1886; Dec. 15, 1886; Jul. 27, 1892, ad 3, 4.)

240. 2°. Special penalties are enacted here against those who violate the bodies or graves of the dead.

(*a*) The penalties are: personal interdict *ferendae sententiae;* infamy of law incurred *ipso facto;* if the offender be a cleric, he should besides be suspended.

(*b*) They are not incurred by any and every interference with the bodies or graves of the dead, but only by such as are prompted by some unlawful motive, stealing or the like. It is the evil end that gives its character to the act and renders it liable to punishment. Ordinarily the purpose of such acts is plunder, but there might be some other aim equally criminal.

X. VIOLATION OF CHURCH OR CEMETERY

Can. 2329. Ecclesiae vel coemeterii violatores, de quibus in can. 1172, 1207, interdicto ab ingressu ecclesiae aliisque congruis poenis ab Ordinario pro gravitate delicti puniantur.

241. 1°. A church is violated or desecrated only by the following acts, provided they are certain, notorious and performed in the church itself: criminal homicide, harmful effusion of blood in considerable quantity, using the church for godless and sordid purposes, burial of an infidel or of a person excommunicated by declaratory or condemnatory sentence. (Can. 1172.)

The same rule applies to the violation of cemeteries. (Can. 1207.)

2°. A person guilty of the act by which a church or cemetery has been violated or desecrated is to be placed under the interdict forbidding him to enter the church, besides the other penalties which may be inflicted upon him by the Ordinary according to the gravity of the delinquency.

TITLE XIII

DELINQUENCIES AGAINST ECCLESIASTICAL AUTHORITIES, PERSONS OR THINGS

I. DELINQUENCIES COMMITTED IN PAPAL ELECTIONS

Can. 2330. Quod attinet ad poenas statutas in delicta quae in eligendo Summo Pontifice committi possunt, unice standum const. Pii X *Vacante Sede Apostolica,* 25 Dec. 1904.

The legislation now in force in regard to Papal elections, together with the sanctions attached to it, is contained in the Constitution of Pius X, *Vacante Sede Apostolica,* December 25, 1904. Four possible abuses in connection with the election of the Pope are therein condemned and punished:

242. 1°. All simony and simoniacal transactions of any kind are forbidden under pain of excommunication *latae sententiae.*

2°. It is forbidden under the same penalty, even for Cardinals, during the lifetime of the Roman Pontiff and without consulting him, to make arrangements for the election of his successor or promise a vote, or to discuss the matter or to take any decision on the subject in private meetings.

243. 3°. In virtue of holy obedience, under threat of divine judgment, and pain of excommunication *latae sententiae,* Cardinals of the Holy Roman Church, all and singular, present and future, and likewise the Secretary of the Sacred College of Cardinals, and all others who take part in the Conclave, are forbidden to accept from any civil power, under any pretext whatsoever, the mission of presenting the *veto* or *exclusiva,* even in the form of a simple desire; or whatever be the way in which the *veto* has come to their knowledge, to make it known directly or indirectly, mediately or immediately, orally or in writing, to the College of Cardinals or to the Cardinals individually, either before or during the Conclave. This prohibition is moreover extended to any intervention or intercession or any other attempt made by lay powers of any grade or order to interfere in the election of a Pontiff.

4°. Cardinals are to abstain from entering into any compact or agreement, or making any promises, or binding themselves in any way to give or not to give their vote to some person or persons; and this also under pain of excommunication.

II. DISOBEDIENCE TO OR CONSPIRACY AGAINST ECCLESIASTICAL AUTHORITY

Can. 2331. § 1. Qui Romano Pontifici vel proprio Ordinario aliquid legitime praecipienti vel prohibenti pertinaciter non obtemperant, congruis poenis, censuris non exclusis, pro gravitate culpae puniantur.

§ 2. Conspirantes vero contra auctoritatem Romani Pontificis eiusve Legati vel proprii Ordinarii aut contra eorum legitima mandata, itemque subditos ad inobedientiam erga ipsos provocantes, censuris aliisve poenis coerceantur; et dignitatibus, beneficiis aliisve muneribus, si sint clerici; voce activa et passiva atque officio, si religiosi, priventur.

Disobedience becomes schism when it implies rejection of the Pope's authority and separation from the center of unity. But without going that far, it may be a sufficiently grave disorder to call for a special sanction. Two forms of it are dealt with in this canon.

244. 1°. *Simple disobedience.* Obstinate disregard for the legitimate commands or prohibitions of the Sovereign Pontiff or of the Ordinary is to be punished according to the gravity of the offence. The nature of the penalty is not determined, but it is explicitly stated that even censures may be used if the case demands.

There must be obstinacy, which supposes previous warnings; and the orders which have been disobeyed must be legitimate. Papal commands are always presumed to be so. Should they seem too hard to comply with or perhaps based on insufficient information, explanations may be offered, but if they are maintained, implicit submission remains the only course to follow.

If the Ordinary's enactments appeared objectionable, appeal or recourse to higher authority would be permitted; but, in most matters, obedience would meanwhile be obligatory.

245. 2°. *Conspiracy.* Disobedience is more criminal, more dangerous to common order, when to it is added conspiracy and several persons encourage one another, support one another, in their insubordination. Those then who conspire against the authority of the Roman Pontiff or of his legate or of their Ordinary, who strive to place obstacles to the legitimate exercise of that authority or to spread the spirit of rebellion among the subjects, are to be placed under censures or otherwise punished.

If they are clerics, they ought to be deprived of their dignities, benefices or other functions; if they are Religious, they should be excluded from office and from the right to vote and to be voted for, active and passive vote.

III. APPEAL FROM POPE TO GENERAL COUNCIL

Can. 2332. Omnes et singuli cuiuscunque status, gradus seu conditionis etiam regalis, episcopalis vel cardinalitiae fuerint, a legibus, decretis, mandatis Romani Pontificis pro tempore exsistentis ad Universale Concilium appellantes, sunt suspecti de haeresi et ipso facto contrahunt excommunicationem Sedi Apostolicae speciali modo reservatam; Universitates vero, Collegia, Capitula aliaeve personae morales, quocunque nomine nuncupentur, interdictum speciali modo Sedi Apostolicae pariter reservatum incurrunt.

C. A. S.— Excommunicationem latae sententiae R. P. speciali modo reservatam incurrunt:

Omnes et singuli, cujuscunque status, gradus seu conditionis fuerint, ab ordinationibus seu mandatis Romanorum Pontificum pro tempore existentium ad universale futurum Concilium appellantes, nec non iis, quorum auxilio, consilio vel favore appellatum fuerit.

Interdictum Romano Pontifici *speciali modo* reservatum ipso jure incurrunt Universitates, collegia et Capitula, quocunque nomine nuncupentur, ab ordinationibus seu mandatis ejusdem Romani Pontificis pro tempore existentis ad universale futurum Concilium appellantia. (Ita Constit. *Apostolicae Sedis,* n. 39, 43).

246. The disorders and confusion resulting from the Great Schism of the West in the fourteenth and fifteenth centuries obscured in many minds the true conception of the Church and of Papal authority. Hence arose the theory, advocated by such men as Gelnhausen, Langenstein in Germany, Gerson in France, of the superiority of a General Council over the Pope; and the practice of appealing from Pope to Council. (L. Pastor, History of the Popes, vol. i, p. 182; F. Mourret, La Renaissance et le Réforme, p. 124.) Pius II, seeing that this abuse was growing to proportions unknown at any time before, pronounced against the offenders and their accomplices a sentence of excommunication, or of interdict if they were moral persons. (*Execrabilis* Jan. 18, 1459.) His decree was confirmed and renewed in the Constitution of Julius II, *Suscepti Regiminis,* July 1, 1509; and afterward in the *Bulla Coenae* and in the Constitution *Apostolicae Sedis.*

Some canonists were of mind that, inasmuch as by the formal definition of the Pope's universal primacy of jurisdiction in the Council of Florence (1439) and of the Papal infallibility in the Vatican Council, appeal from the Pope to a Council clearly implied heresy and schism, a special penalty against it was henceforth unnecessary. (Pennacchi I, p. 405.) But such penalty is maintained in the present Code, which declares the offenders suspected of heresy, thereby admitting that their heresy might not always be evident.

247. 1°. The excommunication *latae sententiae* reserved to the Holy See in a special manner is incurred:

(*a*) By all physical persons appealing from the decisions of the Pope to a Council, whatever be their rank, dignity or condition, even by kings, Bishops or Cardinals, as was implied before and is explicitly stated in the present text.

(*b*) It is incurred whether the appeal is from laws, decrees or mandates, from dogmatic, disciplinary or judicial decisions of the Roman Pontiff. There is no distinction made here between legitimate or illegitimate decisions, as all are presumed to be legitimate and appellants would always question their legitimacy.

(*c*) The appeal must be from the decisions of the reigning Pontiff to a General Council; if it was to the future Pope or to a particular Council or, as has been said at times, " from the Pope insufficiently informed to the Pope better informed " it would not come under this law. Many canonists held that the appeal had to be to a future Council, not to one actually in session; but the qualificative " future " is not found in the present text, and thus there remains no foundation for that opinion.

(*d*) Suspicion of heresy is now added to the penalty of excommunication, but the accomplices are no longer mentioned.

248. 2°. As moral bodies are not excommunicated, the penalty for them is an interdict *latae sententiae* reserved to the Pope in a special manner.

(*a*) It is incurred by universities, colleges, chapters and all moral persons, whatever be their name. The present text is even more explicit on this point than previous ones.

(*b*) The interdict is a general-personal one; it, therefore, affects directly the moral body as such and the members in so far as they belong to the body or are responsible for its action.

IV. RECOURSE TO THE CIVIL AUTHORITY IN ORDER TO IMPEDE THE EXERCISE OF ECCLESIASTICAL JURISDICTION

Can. 2333. Recurrentes ad laicam potestatem ad impediendas litteras vel acta quaelibet a Sede Apostolica vel ab eiusdem Legatis profecta, eorumve promulgationem vel exsecutionem directe vel indirecte prohibentes, aut eorum causa sive eos ad quos pertinent litterae vel acta sive alios laedentes vel perterrefacientes, ipso facto subiaceant excommunicationi Sedi Apostolicae speciali modo reservatae.

C. A. S.— Excommunicationem latae sententiae R. P. speciali modo reservatam incurrunt:

Recurrentes ad laicam potestatem ad impediendas litteras vel acta quaelibet a Sede Apostolica, vel ab ejusdem Legatis aut Delegatis quibuscumque profecta, eorumque promulgationem vel exsecutionem directe vel indirecte prohibentes, aut eorum causa sive ipsas partes sive alios laedentes, vel perterrefacientes.

249. Several Roman Pontiffs had to reprove the pretentions of some prelates who, under the pretext of preventing frauds, claimed that all Pontifical decrees, letters, etc., had to be submitted to them before going into effect in their territory. (Martin V, *Quod antidota,* Ap. 30, 1418; Julius II, *Consueverunt,* Mar. 1, 1511; Leo X, *In supremo,* Mar. 1, 1518; Clement VII, *Romanus Pontifex,* Dec. 29, 1533.) Others appealed to the civil authorities in support of their claims or in general to impede the exercise of Pontifical authority.

All these abuses and others connected with them were condemned and punished in the *Bulla Coenae* and the Constitution *Apostolicae Sedis.* The present canon maintains the existing discipline without any changes.

Excommunication *latae sententiae* specially reserved to the Holy See is pronounced against three classes of persons:

250. 1°. Those who have recourse to the civil authority to impede letters or other communications from the Apostolic See or its legates. (Lehmkuhl, ii, n. 932.)

(*a*) No distinction is made between lay persons, clerics, dignitaries; all are equally affected by this censure.

(*b*) The recourse may be in the form of a judicial appeal or of recourse strictly so called or of a simple request. It must be addressed to the civil authority, which implies a person in power. It would not suffice to ask for the intervention of an influential person who has no special official position, or for the intervention of a magistrate if he was to use only his personal influence, not the authority belonging to him by his office.

(*c*) Letters or Acts include all communications from the Holy See or its delegates, whether they come from the Pope directly or only indirectly through the Roman Congregations, Offices, or Tribunals. (H. O. Jan. 13, 1892.)

(*d*) The object of the recourse must be to prevent the Papal communications from attaining their purpose; it does not seem necessary that the attempt should be successful to incur the censure. (Avanzini, p. 283.)

251. 2°. Those who directly or indirectly prohibit the promulgation or execution of the same Letters or Acts of the Holy See.

(*a*) Prohibition proper supposes authority and must come from a person possessing some jurisdiction. It would be direct, if, for example, a magistrate should issue a decree forbidding a certain measure to be taken or if he would exclude from the mails certain documents, like the Bulls appointing Bishops.

(*b*) Again to incur the censure it is not necessary that the prohibition should have really prevented the promulgation or the execution of the Letters or Rescript.

252. 3°. Those who, on account of the Apostolic Letters or communications, injure or intimidate the parties for whom those communications are intended or other persons.

V. INTERFERENCE WITH THE LIBERTY, RIGHTS, AND JURISDICTION OF THE CHURCH

Can. 2334. Excommunicatione latae sententiae speciali modo Sedi Apostolicae reservata plectuntur:

1.° Qui leges, mandata, vel decreta contra libertatem aut iura Ecclesiae edunt;

2.° Qui impediunt directe vel indirecte exercitium iurisdictionis ecclesiasticae sive interni sive externi fori, ad hoc recurrentes ad quamlibet laicalem potestatem.

C. A. S.— Excommunicationem latae sententiae R. P. specialiter reservatam incurrunt: VII. . . . Edentes leges vel decreta contra libertatem vel jura Ecclesia. VI. Impedientes directe vel indirecte exercitium jurisdictionis ecclesiasticae sive interni sive externi fori, et ad hoc recurrentes ad forum saeculare ejusque mandata procurantes, edentes, aut auxilium, consilium vel favorem praestantes.

This canon embodies number vi of the Constitution *Apostolicae Sedis* with important modifications and part of number vii. It inflicts excommunication reserved to the Pope in a special manner, to be incurred *ipso facto,* on two classes of offenders:

253. 1°. On those who enact laws, mandates or decrees against the liberties or rights of the Church.

(*a*) By laws, mandates, or decrees are meant all legislative acts, whether they emanate from the supreme power in the State or from subordinate authorities like mayors, city councils, school boards. Mandates and decrees are of a less general and permanent character than laws; still, at least as understood here, they partake of the nature of law and do not include particular precepts or sentences for individual cases.

(*b*) Legislative power, in a republic, usually resides in a parliament, a president and ministers of state. Members of parliament who contribute by their vote to the passing of some legislation, the president who signs and confirms it, the ministers who promulgate it, are all considered as enacting it; but not the magistrates who execute it, nor lower officials, secretaries or other persons whose cooperation does not imply exercise of legislative power.

(*c*) The liberty and rights here spoken of are not directly those belonging to individual members of the Church, but rather the liberty and rights of the Church as an organization and of her representatives, the clergy, the Bishops, and particularly the Roman Pontiff. Such are the rights to preach, to administer the sacraments, to form religious congregations, to open schools, to own and administer property; the liberty of public worship, etc.

254. 2°. This excommunication is incurred also by those who, directly or indirectly, impede the exercise of ecclesiastical jurisdiction, whether of the internal or of the external forum, and who with such intent have recourse to any lay power. (Cappello, n. 84.)

(*a*) The first condition for incurring the censure is to impede really the exercise, not of the power of Orders, but of jurisdiction, whether ordinary or delegated, legislative, judicial or administrative; for example, preventing a Bishop from holding a synod, from appointing or removing pastors; or even from giving Confirmation and Holy Orders; preventing a pastor from preaching or saying Mass for his people, a confessor approved by the Ordinary from hearing confessions. (Avanzini, p. 249.)

(*b*) The second condition is that the exercise of ecclesiastical jurisdiction be prevented by having recourse to the civil authority.

According to many interpreters of the Constitution *Apostolicae Sedis,* impeding the exercise of jurisdiction and having recourse to lay authority were two distinct, independent offences; the particle *et* which connected the two clauses they took to be equivalent to *vel,* the more so as the *Bulla Coenae* had instead "*ac etiam eos.*" The different wording of the present canon excludes that interpretation; hence if the exercise of jurisdiction was impeded in some other way, *e.g.,* by threats, violence, the censure would not be incurred. (Lehmkuhl, ii, n. 929; Gennari, Consultations canoniques, iv, p. 50.)

(*c*) It is now clear that "lay power" ought to be understood in a general sense and not restricted to the judicial one.

(*d*) Those who provoke or deliver the decisions of the secular authority, or lend it aid, counsel, or support, do not come under this law any longer.

255. 3°. It is provided in a subsequent canon (2336) that if the offenders are clerics, besides being excommunicated on the same conditions as laymen, they should be suspended or deprived of whatever office, benefice, dignity, pension or function they might have in the Church. If they are Religious, they should be deprived of office, of active and passive vote, and subjected to other privations in accordance with their constitutions.

VI. AFFILIATION WITH MASONIC OR SIMILAR SOCIETIES

Can. 2335. Nomen dantes sectae massonicae aliisve eiusdem generis associationibus quae contra Ecclesiam vel legitimas civiles potestates machinantur, contrahunt ipso facto excommunicationem Sedi Apostolicae simpliciter reservatam.

C. A. S.—Excommunicationem R. P. simpliciter reservatam incurrunt: Nomen dantes sectae *Massonicae,* aut *Carbonariae,* aut aliis ejusdem generis sectis quae contra Ecclesiam vel legitimas potestates seu palam, seu clandestine machinantur, nec non iisdem sectis favorem qualemcunque praestantes; earumve occultos coriphaeos ac duces non denuntiantes, donec non denuntiaverint.

256. 1°. *Former legislation.* Masonic and other societies of a similar nature have been proscribed by civil rulers themselves, Protestant as well as Catholic. In fact, "the first measures against Freemasonry were taken by Protestant governments: Holland, 1735; Sweden and Geneva, 1738; Zurich, 1740; Berne, 1745; Prussia, 1798." In England an act of Parliament passed on July 12, 1798, interdicts Masonic associations and meetings. Measures against

Freemasonry were taken also in some parts of the United States of America during the period 1827–1834. (Catholic Encyclopedia, Masonry.)

Clement XII pronounced excommunication upon Freemasonry in the Constitution *In Eminenti,* April 28, 1738; and his sentence has been formally confirmed or renewed by almost every one of his successors to the present day. Particular Councils have endorsed the action of the Popes; amongst others the Provincial Council of Baltimore, 1840; of New Orleans, 1856; of Quebec, 1868; the Plenary Councils of Baltimore, 1866, 1884.

257. 2°. *Present Law.* All persons joining Masonic or similar associations which plot against the Church or legitimate civil authority incur *ipso facto* an excommunication reserved to the Holy See.

(*a*) By sect or association is understood an organization having its own statutes and officials; it may not have any religious character, but there must be some bond of union among the members.

(*b*) The penalty is incurred by the mere fact of becoming affiliated with the organization or giving one's name to it, even if no meeting be attended and membership remain purely nominal; on condition, however, that the character of the society and the penalty for joining it be known. If a person had joined in good faith, he would be bound to withdraw as soon as he would become conscious of his error, but he would not incur excommunication as long as he would not affirm his membership by a new act. (Ecclesiastical Review, 1896, p. 361, 639; 1913, p. 498.)

(*c*) The association must be one of those which are forbidden under pain of censure. (Cappello, n. 105.)

Some societies are forbidden simply under pain of grave sin: the Knights of Pythias, the Odd Fellows, the Sons of Temperance (H. O. Aug. 20, 1894), the Independent Order of Good Templars (H. O. Aug. 9, 1893); societies established to promote cremation (H. O. May 19, 1886); various Biblical societies and in general all associations which exact from their members an oath of strict secrecy and of absolute obedience to the leaders; also female societies affiliated with them, such as the Rebeccas, the Eastern Star, the Pythian Sisters.

The societies forbidden under pain of censure are: the Masons, as nominally mentioned in this canon; the Carbonari, who were mentioned also in the Constitution *Apostolicae Sedis;* the Fenians (H. O. Jan. 12, 1870); and all associations which plot against the Church or legitimate civil authority. Such certainly are, besides those nominally condemned, nihilistic, anarchistic and perhaps some socialistic societies. What is to be considered is their end, not the secrecy which they may or may not impose on their members. (H. O. May 10, 1884.) The question whether a certain society is to be considered as under excommunication is reserved for final decision, by the third Plenary Council of Baltimore, to a commission of Archbishops; if they cannot reach a unanimous verdict the matter is to be referred to the Holy See. (N. 254.)

(*d*) Under the present discipline, the excommunication is not extended to persons who favor those societies, or who do not denounce their leaders or principal members. Cooperation with them may, however, be punished as any other form of cooperation in a delinquency (can. 2209) and the obligation of denunciation may exist by the natural or even the ecclesiastical law. (Can. 1935.)

258. 3°. *Special penalties.* Should a cleric become affiliated with a Masonic or similar organization, besides incurring the excommunication reserved to the Holy See, he should be suspended or deprived of any benefice, office, dignity, pension, or function he may have in the Church; a Religious should be deprived of office and of active and passive vote, besides other punishments which may be prescribed by the Constitutions.

Both cleric and Religious should be denounced to the Holy Office.

259. 4°. *Absolution of Masons or other such delinquents.* (*a*) As ignorance either of the law or of the penalty, provided it be not crass or supine, excuses from censures, if the penitent had acted in good faith, not knowing that he was exposing himself to any special punishment, no extraordinary faculties would be required to absolve him. Regularly, he should withdraw at once from the society, but the Church permits him to remain a merely nominal member, provided there be in this no danger of scandal or perversion and it be impossible to withdraw without suffering some serious inconvenience. (H. O. March 7, 1883; A. S. S. xxvii, p. 701; Jan. 18, 1896, A. E. R. xiv, p. 361; Lehmkuhl, ii, n. 950.)[1]

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[1] Asked whether members of the three condemned societies, the Odd Fellows, the Sons of Temperance, and the Knights of Pythias, might be dispensed from withdrawing formally and permitted to continue paying their dues, the Holy Office answered, January 19, 1896, that by way of exception, they might, on the following conditions: (1) that they had joined the society in good faith before knowing that it was condemned; (2) that no scandal result therefrom or that it be removed by declaring that the only reason for retaining mem-

(*b*) If the excommunication was certainly incurred, the Ordinary may still absolve or give faculties to absolve from it when the case is occult, *i.e.,* when it is not, nor likely to become, publicly known that the penitent was a member of a society forbidden under pain of excommunication. (Can. 2237.)

(*c*) If the case is a public one, it may frequently be one of urgent necessity, particularly because often the penitent could not without serious inconvenience remain without absolution until faculties have been obtained from Rome. He is absolved, then, under the usual condition of recourse within a month to the proper authority. (Can. 2254.)

(*d*) The Indult which many Ordinaries obtain from the Sacred Penitentiary contains faculties to absolve members of forbidden societies. (Lehmkuhl, ii, n. 950–952; Noldin, De Praeceptis, n. 834–836; Genicot, Theologiae Moralis Institutiones, ii, n. 596, 597; Putzer, n. 142; Avanzini-Pennacchi, p. 595–644; Gould, History of Freemasonry, 3 vols. 1883–1887; Preuss, A Study in American Freemasonry, St. Louis, 1908; Catholic Encyclopedia, Masonry.)

bership is not to incur material losses; and meanwhile all communication with the sect be avoided and the meetings be not attended; (3) that it be impossible to withdraw without grave loss; (4) that there be no danger of perversion for the party himself or his family, particularly in case of sickness or of death, nor danger of non-Catholic funeral.

It was added that, in order to secure uniformity of practice, all such cases should be referred to the Apostolic Delegate. (A. E. R., vol. xiv, p. 361.) A later Decree permits to refer them to the Archbishop of the province. (June 26, 1913; A. E. R., 1913, p. 468.)

VII. INCITING THE PEOPLE TO PREVENT EXERCISE OF ECCLESIASTICAL JURISDICTION

Can. 2337. § 1. Si parochus, ad impediendum exercitium ecclesiasticae iurisdictionis, ausus fuerit turbas ciere, publicas pro se subscriptiones promovere, populum sermonibus aut scriptis excitare aliaque similia agere, pro gravitate culpae, secundum prudens Ordinarii iudicium, puniatur, non exclusa, si res ferat, suspensione.

§ 2. Eodem modo puniat Ordinarius sacerdotem qui multitudinem quoquo modo excitet ad impediendum ingressum in paroeciam sacerdotis legitime nominati in parochum aut oeconomum.

In the Decree *Maxima cura* pastors were forbidden to have recourse to any kind of popular agitation in order to prevent their removal or resignation. This canon provides a sanction for the same abuse, only in more general terms.

260. 1°. A parish priest who, in order to impede the exercise of ecclesiastical jurisdiction, whether the act concerns him personally or not, would provoke popular demonstrations, encourage public petitions in his favor, stir up the people by speech or writing, by sending communications to newspapers, circulating pamphlets, etc., should be punished according to the gravity of his offence.

(*a*) The nature of the penalty is not determined by law; this is left to the prudent judgment of the Ordinary, who is directed to inflict even the pain of suspension if the case calls for it.

(*b*) The law speaks here only of pastors, not of other ecclesiastics, and of pastors who "dare" — *ausus fuerit,* which supposes full deliberation and malice. A few imprudent words uttered without much reflection, under the influence of passion, would not fulfill this condition.

(*c*) As said before, excommunication would be incurred if the exercise of ecclesiastical jurisdiction was impeded by recourse to civil magistrates.

261. 2°. The same punishment should be inflicted on a priest who would, by whatever means, arouse the people so that they would prevent the pastor or administrator legitimately appointed from entering the parish. Only pastor and administrator are mentioned.

The word used here is "priest," not "pastor." To come under this law he must appeal to the crowd, not simply to a few persons. Entering the parish means, no doubt, taking possession in such a manner that it be possible to exercise the pastoral functions. It does not matter whether this is done directly or indirectly.

VIII. VIOLATION AND RESPONSIBILITY FOR THE VIOLATION OR IMPOSITION OF CENSURES

Can. 2338. § 1. Absolvere praesumentes sine debita facultate ab excommunicatione latae sententiae specialissimo vel speciali modo Sedi Apostolicae reservata, incurrunt ipso facto in excommunicationem Sedi Apostolicae simpliciter reservatam.

§ 2. Impendentes quodvis auxilium vel favorem excommunicato vitando in delicto propter quod excommunicatus

C. A. S.— Excommunicatio latae sententiae S. A. simpliciter reservata viget contra:

Absolvere praesumentes sine debita facultate, etiam quovis praetextu, ab excommunicationibus speciali modo S. Pontifici reservatis, dummodo non agatur de articulo mortis.

Communicantes cum excommunicato nominatim a Papa in crimine criminoso, ei scilicet im-fuit; itemque clerici scienter et sponte in divinis cum eodem communicantes et ipsum in divinis officiis recipientes, ipso facto incurrunt in excommunicationem Sedi Apostolicae simpliciter reservatam.

§ 3. Scienter celebrantes vel celebrari facientes divina in locis interdictis vel admittentes ad celebranda officia divina per censuram vetita clericos excommunicatos, interdictos, suspensos post sententiam declaratoriam vel condemnatoriam, interdictum ab ingressu ecclesiae ipso iure contrahunt, donec, arbitrio eius cuius sententiam contempserunt, congruenter satisfecerint.

§ 4. Qui causam dederunt interdicto locali aut interdicto in communitatem seu collegium, sunt ipso facto personaliter interdicti.

pendendo auxilium vel favorem.

Clericos scienter et sponte communicantes in divinis cum personis a R. Pontifice nominatim excommunicatis et ipsos in officiis recipientes.

Scienter celebrantes vel celebrari facientes divina in locis ab Ordinario, vel delegato Judice, vel a jure interdictis, aut nominatim excommunicatos ad divina officia, seu ecclesiastica sacramenta, vel ecclesiasticam sepulturam admittentes, interdictum ab ingressu Ecclesiae ipso jure incurrunt, donec ad arbitrium ejus, cujus sententiam contempserunt, competenter satisfecerint. (Ibid., n. 39, 68.)

262. 1°. An excommunication *latae sententiae* reserved to the Holy See is incurred by those who presume to absolve, without the necessary faculties, from excommunications reserved to the Holy See in a special or very special manner. (Cappello, n. 106.)

(*a*) Sin is committed, but no censure is incurred by one who absolves, without the necessary faculties, from suspension or interdict, or from excommunication reserved to the Ordinary or even to the Pope but in a simple manner. In danger of death or in urgent necessity, faculties to absolve are granted by common law.

(*b*) Presumption is required to incur this censure and therefore any cause lessening the imputability excuses from it. (Can. 2229, § 2.)

263. 2°. The same penalty is incurred by holding communion with *excommunicati vitandi* under certain conditions.

Before Innocent III, any one having any intercourse with a person under a major excommunication, fell himself under the same censure. That Pope made a distinction between the communication which he called *in crimine criminoso, i.e.,* in the crime itself for which the excommunication is incurred, and ordinary communication. The former was punished with major, the latter with minor excommunication. After the Constitution of Martin V, *Ad evitanda,* April 15, 1418, it remained obligatory to avoid only the excommunicated, henceforth called *vitandi, i.e.,* those who had been excommunicated by name or whose offence was the public striking of clerics. (Gennari, Cons. Mor. cv.)

Under the present law which, on this point, does not really differ from the Constitution *Apostolicae Sedis,* the excommunication for holding communion with the *vitandi* is reserved to the Holy See only in a simple manner, and it may be incurred in two ways:

264. 1. By giving assistance or countenance to a *vitandus* in the very delinquency for which he is excommunicated.

(*a*) A *vitandus* at present is one who has been excommunicated by name by the Holy See, publicly denounced as such and explicitly declared *vitandus* in the decree or sentence (can. 2258); or one who is excommunicated for laying violent hands on the Roman Pontiff. (Can. 2343.) It does not seem necessary now that the sentence should be pronounced by the Pope, since the words used in the present text are "the Holy See."

(*b*) Communication with a *vitandus* other than by giving assistance or countenance would not come under this law. The assistance may be physical or moral, provided it be grave or notably effective and formal.

(*c*) It must be given in the delinquency already perpetrated for which the censure is incurred; not in the commission of the delinquency itself, since this must be consummated before the culprit becomes *vitandus,* but in its continuation; as when a person had been excommunicated for stealing and he would be helped, encouraged or protected, so that he may not make restitution, or may keep on stealing, or refuse to leave the occasion.

265. 2. The excommunication is incurred by clerics who knowingly and willingly hold communion *in divinis* with a *vitandus* and who receive him in the divine offices.

(*a*) This censure affects only clerics, not laymen, nor probably Bishops or Religious, and some add clerics who are not in Sacred Orders. (Pighi, 44.)

(*b*) It supposes both full knowledge and complete freedom; ignorance, provided it be not affected, and even light fear, would excuse.

(*c*) The offence consists in holding communion *in divinis* and in receiving in the divine offices. The second clause has been interpreted by many ancient canonists, and most of the more recent ones, as a complement and an explanation of the first, although some see there two distinct forms of the same delinquency.

(*d*) The divine offices are the functions of the power of orders which by divine or ecclesiastical law pertain to divine worship and can be exercised only by clerics (can. 2256); "*divina*" is often taken in about the same sense. (Can. 2279, § 2.) Holy Mass, the other liturgical public services, also, in a less strict sense, the sacraments and Christian burial are divine offices. A *vitandus* is said to be admitted to the divine offices when he is permitted to celebrate them, to take an active part in them; or, according to some, when he is allowed to assist at them, to receive the sacraments, to be buried with the rites of the Church. (Lehmkuhl, ii, 965; D'Annibale, i, 392; Pighi, n. 45.)

(*e*) Only one having some authority can admit to divine offices and therefore this censure can be incurred only by an ecclesiastic in some official position.

266. 3°. An interdict from entering the church is incurred, *ipso facto,* by those who violate a local interdict or who permit ecclesiastics to violate the censure imposed upon them.

(*a*) The violation of local interdict punished in this canon consists in celebrating or having others celebrate divine services in an interdicted place, whatever be the authority that pronounced the interdict. This must be done knowingly, hence ignorance excuses, but not light fear or similar obstacles to perfect freedom, as it is not asked that the act be fully "spontaneous," *sponte.* Another may be caused to celebrate by command, request, persuasion, mandate, etc.

(*b*) To be responsible for the violation of a censure by other ecclesiastics and so incur this interdict, one must be in authority and as such admit to the celebration of divine offices from which they are excluded by the censure, clerics who have been excommunicated, interdicted, suspended by declaratory or condemnatory sentence. The Constitution *Apostolicae Sedis* had "clerics excommunicated by name." The censure does not have to be pronounced by the Holy See.

(*c*) Together with the divine offices the Constitution *Apostolicae Sedis* explicitly mentioned the sacraments and ecclesiastical burial; the present law does not (cf. can. 2339) and it states more explicitly, besides, that it is admission to the celebration of, not to assistance at, the divine offices, that the penalty affects. It is legitimate then to conclude that the expression "divine offices" is to be taken here in its strict sense as including only the functions of the power of Orders pertaining to divine worship; and "*divina*" in the preceding clause may probably be understood in the same sense.

(*d*) The interdict is not directly reserved but it is to last until, in the estimation of the superior whose sentence was disregarded, fitting satisfaction has been made. It ceases when the penance imposed by him has been performed or when he declares the reparation sufficient.

267. 4°. Those who are the cause of an interdict being laid on a place or on a community or college, incur themselves a personal interdict. They are the cause when they are personally guilty of, or responsible for, the offence for which the place or moral body was interdicted. The interdict is not reserved.

IX. VIOLATION OF LAWS REGARDING CHRISTIAN BURIAL

Can. 2339. Qui ausi fuerint mandare seu cogere tradi ecclesiasticae sepulturae infideles, apostatas a fide, vel haereticos, schismaticos, aliosve sive excommunicatos sive interdictos contra praescriptum can. 1240, § 1, contrahunt excommunicationem latae sententiae nemini reservatam; sponte vero sepulturam eisdem donantes, interdictum ab ingressu ecclesiae Ordinario reservatum.

C. A. S.— Excommunicationem nemini reservatam incurrunt:

Mandantes seu cogentes tradi ecclesiasticae sepulturae haereticos notorie aut nominatim excommunicatos vel interdictos.

268. 1°. The Church refuses Christian burial to several classes of persons (can. 1240); some of them are to be excluded under pain of sin only, others under pain of censure also. To the latter class, with which we are here concerned, belong: all infidels, notorious apostates from the Christian faith, members of heretical or schismatic sects publicly known as such, not heretics or schismatics who do not belong, or are not generally known to belong, to any sect; persons who have been excommunicated or interdicted by condemnatory or declaratory sentence — unless they would have done penance before dying. (Cappello, n. 137; Cerato, n. 64.)

269. 2°. Christian burial canonically and liturgically includes three things, the transfer of the body to the church, the funeral service over it in church and its interment in consecrated ground or in a place officially set apart for the burial of the faithful. Frequently, by Christian burial is meant simply interment in consecrated ground even without any special religious rites. This is the sense in which it had been commonly taken and which the expression "*tradere ecclesiasticae sepulturae*" naturally suggests, but canon 1204 requires three elements.

To be consecrated, as understood here, the ground must be set apart by legitimate, *i.e.*, episcopal, authority and also, according to the common opinion, blessed by the Bishop or his delegate in the form prescribed in the Pontifical or Ritual. (Many, De locis sacris, n. 223.) If the graves are blessed only individually, the cemetery is not consecrated ground.

270. 3°. When, contrary to the law of the Church, ecclesiastical burial in the sense just explained is given to one of the persons mentioned above, a twofold censure may be incurred.

(*a*) An excommunication *latae sententiae* reserved to no one is incurred by those who command the action, *e.g.*, by an official who would order a Protestant buried in a Catholic cemetery; or by any person who would force the pastor, by means of violence, fear or otherwise, to permit that burial. None of the other cooperators would be affected by the censure, and the present like the old law requires rashness, *i.e.*, full knowledge, deliberation and freedom, differing in this from the corresponding provisions of the Constitution *Apostolicae Sedis.*

(*b*) An interdict from entering the church, reserved to the Ordinary, is incurred by those who of their own accord, with perfect freedom, grant Christian burial to the same persons. The concession can come from, and consequently the censure incurred by, only persons in authority, the pastor, the rector of the church; not by those who simply perform the funeral service, assist at it, ask for it. (D'Annibale, i, n. 394; Many, l. c., n. 224.)

X. OBDURACY IN CENSURES

Can. 2340. § 1. Si quis, obdurato animo, per annum insorduerit in censura excommunicationis, est de haeresi suspectus.

§ 2. Si clericus in censura suspensionis per semestre perseveraverit, graviter moneatur; et si, exacto a monitione mense, a contumacia non recesserit, privetur beneficiis aut officiis, si qua in Ecclesia forte habeat.

271. The main purpose of censures as medicinal penalties is to bring the delinquent back to the path of duty. If he obstinately refuses to heed this solemn warning, he manifests dispositions which call for severer punishment. Hence, renewing an ancient legislation with only accidental changes, this canon decrees that:

1°. Any person who stubbornly remains under excommunication for a whole year when he could and should obtain absolution, becomes suspected of heresy and may be treated accordingly. A Christian who is satisfied to continue so long cut off from the communion of the faithful and deprived of its privileges gives good ground for doubting the soundness or sincerity of his faith. (Council of Trent, Sess. xxv, c. 3.)

2°. A cleric who having been suspended neglects for six months to obtain absolution should be seriously admonished. If within a month after this he has not amended he should be deprived of the benefices or offices he might have in the Church. (C. 8, x, i, 14.)

XI. VIOLATION OF THE *PRIVILEGIUM FORI*

Can. 2341. Si quis contra praescriptum can. 120 ausus fuerit ad iudicem laicum trahere aliquem ex S. R. E. Cardinalibus vel Legatis Sedis Apostolicae, vel Officialibus maioribus Romanae Curiae ob negotia ad eorum munus pertinentia, vel Ordinarium proprium, contrahit ipso facto excommunicationem Sedi Apostolicae speciali modo reservatam; si alium Episcopum etiam mere titularem, aut Abbatem vel Praelatum *nullius,* vel aliquem ex supremis religionum iuris pontificii Superioribus, excommunicationem latae sententiae Sedi Apostolicae simpliciter reservatam; demum si, non obtenta ab Ordinario loci licentia, aliam personam privilegio fori fruentem, clericus quidem incurrit ipso facto in suspensionem ab officio reservatam Ordinario, laicus autem

C. A. S.— Excommunicationem latae sententiae speciali modo R. P. reservatam incurrunt:

Cogentes sive directe, sive indirecte judices laicos ad trahendum ad suum tribunal personas ecclesiasticas praeter canonicas dispositiones; item edentes leges vel decreta contra libertatem aut jura Ecclesiae.

H. O. January 23, 1886. — Si quis ausus fuerit trahere ad judices laicos vel clericum sine venia Ordinarii, vel Episcopum sine venia S. Sedis, in potestatem eorumdem Ordinariorum erit in eum praesertim si fuerit clericus, animadvertere poenis et censuris ferendae sententiae, uti violatorem privilegii fori, si id expedire in Domino judicaverint.

"Quantavis Diligentia," October 9, 1911. Statuimus: quicumque privatorum, laici sacrive

congruis poenis pro gravitate culpae a proprio Ordinario puniatur.

ordinis, mares feminaeve, personas quasvis ecclesiasticas, sive in criminali causa sive in civili, nullo ecclesiasticae potestatis permissu, ad tribunal laicorum vocent, ibique adesse publice compellant, eos etiam omnes in excommunicationem latae sententiae speciali modo Romano Pontifici reservatam incurrere.

272. 1. Former Discipline. It is repugnant to Christian sense that priests and Bishops, who are the fathers and teachers of the faithful, should have to appear before them to be judged by them. Hence as soon as the rights of the Church began to be recognized, synods demanded that ecclesiastical matters be withdrawn from the jurisdiction of secular courts and clerics judged by ecclesiastical tribunals. This is what constitutes essentially the *Privilegium Fori,* or privilege of special court, which was admitted in the law of Christian nations at a very early date.

1°. But if recognized in principle, the privilege was not always respected in practice and it needed the protection of severe sanctions.

The Councils of Chalcedon (451) and Toledo (589) threaten with excommunication any cleric who would sue a cleric before a lay court. The Councils of Cologne (1266), Exeter (1287), Leyde (1293) and others pronounce this penalty also against laymen if they commit the same offence.

This was principally local legislation; but as in the fourteenth and fifteenth centuries abuses had multiplied, Martin V extended it to the whole Church, in the Constitution *Ad reprimendas insolentias* (Feb. 1, 1428) and decreed that all persons, secular or regular, judges and their accomplices, private persons as well as those in authority, who would bring clerics before a civil tribunal or take a leading part in proceedings against them, would incur an excommunication.

2°. Special circumstances had rendered necessary these exceptionally severe measures, which ceased to be enforced as soon as conditions changed. The discipline of the Church for a long period of years is represented by the *Bulla Coenae,* in which excommunication is decreed against legislators who enact laws contrary to the rights of the Church and against public officials who bring before their tribunal clerics entitled to the *Privilegium Fori.* There is no mention of private persons.

273. 3°. At a time when ecclesiastical courts were organized everywhere and their authority recognized by the civil power, it was a great abuse on the part of the secular judges to bring clerics to their tribunal. The action of plaintiffs who appealed for justice to lay, when they should have gone to ecclesiastical, courts was considered a less serious disorder. But in modern societies the position of judges is no longer the same; often they are not free not to take or refuse proceedings against a cleric. In view of these new conditions the law was so modified in the Constitution *Apostolicae Sedis* that henceforth the censure would strike not the judges or inferior officials, as was explicitly declared by the Holy Office (June 15, 1870, Feb. 1, 1871), but those who compel the judges to bring clerics to their court.

Another decree of the same Congregation (H. O. Jan. 23, 1886) approved by Leo XIII stated that among the *cogentes,* those who compel the judges, are not included private persons who sue clerics before civil tribunals. It was added, however, that except where special permission had been obtained from the Holy See, it was forbidden to have recourse to civil courts against ecclesiastics, unless there would be no other way of protecting one's rights, and even then authorization to bring suit was to be asked from the Ordinary, or from the Pope, if suit was to be brought against a Bishop. Violations of these rules could be punished by the Ordinary.

274. 4°. The *Motu Proprio Quantavis diligentia* modified again this legislation, but in the sense of greater severity.

"Now in these evil times," says the Pontiff, "when there is so little regard shown for ecclesiastical immunity that not only clerics and priests but also Bishops and Cardinals of the Holy Roman Church are brought before lay tribunals . . . we enact and ordain that all private persons, whether of the laity or of the clergy, male or female, who without permission of the ecclesiastical authority, call before lay judges any ecclesiastical persons and compel them to appear publicly in court, either in criminal or civil cases, incur an excommunication *latae sententiae* reserved to the Roman Pontiff in a special manner."

The change introduced here does not concern legislators or judges but only private persons, plaintiffs. These are forbidden, as in the decree of the Holy Office, to bring ecclesiastics before secular courts without proper permission, but the penalty now is excommunication and it is incurred *ipso facto.*

Moreover, what is thus forbidden is to summon and compel ecclesiastics to appear before lay tribunals — "*ad tribunal laicorum vocent ibique adesse publice compellant*"— which could naturally be understood, and was afterward interpreted, to include also the summoning of ecclesiastics as witnesses. (H. O. Jan. 11, 1912; answer to the Bishop of Larino; Il Monitore Ecclesiastico, Mar. 31, 1912; Jan. 31, 1912, p. 506; Maggio 1912, p. 130; Canoniste contemporain, May, 1912, p. 298.) The authorization of the Ordinary was always needed to compel ecclesiastics to appear as witnesses before the civil judges, on account of their privilege of personal immunity, but this was not under pain of censures. (G. Sebastianelli, Praelectiones Juris Canonici, De Judiciis, p. 161; Santi, Praelectiones Juris Canonici, l, ii, tit. xxi.)

2. Present Law

275. 1°. *The Privilege of the Court.* In principle it remains the same as before: clerics, in civil as well as in criminal cases, ought to be brought only before ecclesiastical judges, unless in particular cases some other provision has been legitimately made, or unless permission has been obtained to bring them before a lay court. This permission can be granted only by the Holy See if the defendant be a prelate of higher rank; it may be given by the Ordinary in the case of an ecclesiastic of lower order. (Can. 120.) (Cappello, n. 92, 93.)

(*a*) The expression uniformly used in canon 120 for "bringing before the court" is *convenire*, which usually means to summon as defendant, not simply as witness. (P. J. Ferreres, Institutiones Canonicae, vol. i, n. 255; cf. C. Augustine, A Commentary on the new Code of Canon Law, vol. ii, p. 64.)

(*b*) It is explicitly admitted, as formerly but in terms more general than those, for example, of the decree referred to above (H. O. Jan. 23, 1886), that there may exist in some places legitimate provisions by which the *Privilegium Fori* ceases to be in full force. They may be the result of concordats, of formal concessions, or of custom; where they exist they are maintained.

(*c*) It is also recognized that permission to cite ecclesiastics before lay judges may or even should under certain conditions be granted; and the law sets forth in detail the cases in which it must be obtained from the Pope and those in which it may be given by the Ordinary.

276. 2°. *Penalties.* They are of different degrees according to the rank of the person against whom the offence is committed.

(*a*) An excommunication *latae sententiae* reserved to the Holy See in a special manner is incurred by him who dares bring before a lay tribunal, without permission from the Apostolic See, one of the Roman Cardinals, a Legate of the Holy See, or one of the higher officials of the Roman Curia in connection with matters pertaining to his office or his own Ordinary.

The term "Legates of the Apostolic See" includes in the present Code, not only nuntios and internuntios, as some would interpret it, but also Apostolic Delegates. (Can. 267; Pighi, n. 28.)

The higher officials of the Curia are, besides the Cardinals, those whom the Pope appoints directly without concursus: in the Congregation of the Holy

Office, the Adsessor and the Commissary; in the Sacred Congregation of the Sacraments, the Secretary and three Subsecretaries; in the Congregation of Council and Religious, the Secretary and Subsecretary; in the Consistorial Congregation, the Adsessor and substitute; in the Congregation of Rites, the Secretary and substitute.

These are protected by this censure in matters arising from their office; in other matters they are in the same condition as other ecclesiastics.

(*b*) The penalty is an excommunication reserved to the Holy See in a simple manner, when the ecclesiastic brought before the court without papal authorization is a Bishop other than the offender's own Ordinary, even a merely titular Bishop or an abbot, a prelate *nullius,* one of the major superiors in a papal institute, *i.e.,* a religious organization which has received either approval or at least the *decretum laudis* from the Holy See. The major superiors are the abbot primate, abbots who are superiors of monastic congregations, abbots of independent monasteries, the Superiors General of any religious congregation, the Provincial and their Vicars, and all others who have the same jurisdiction as Provincials. (Can. 488.)

(*c*) When any person entitled to the privilege of the court other than those mentioned above is brought before the civil judge without the permission of the Ordinary of the place, the penalty is suspension from office, reserved to the Ordinary and to be incurred *ipso facto,* if the offender is a cleric; if he is a layman, he shall be punished by the Ordinary according to his guilt.

Those entitled to the privileged court are all clerics, that is, all who have received at least tonsure, and also all Religious even lay Brothers and Sisters and novices. (Can. 108, 614.)

The Ordinary whose permission is necessary is the Ordinary of the place in which the case is to be tried, even for suing Religious.

277. 3°. *By whom are these penalties incurred?* Under the discipline of the *Bulla Coenae* they were incurred by the judges or officials, not by private persons, parties or plaintiffs. Under the Constitution *Apostolicae Sedis* they were not incurred by private persons or by judges but by legislators or higher officials, not by the *trahentes* but by the *cogentes trahere,* by persons in authority who freely *a nullis coacti* forced the judges to act. The *Motu Proprio Quantavis diligentia* applies the censure also to private persons suing clerics in the civil courts.

The present canon is lacking in the clause which concerned legislators or other superiors who may impose upon judges the obligation of summoning ecclesiastics. These come under another law. (Can. 2334.) It punishes those who bring ecclesiastics before the civil magistrate, the *trahentes.* Both judges and plaintiffs are or may be *trahentes;* they are considered as such, the former in the Constitution *Apostolicae Sedis,* the latter in the *Quantavis diligentia.* Under the present law, then, they are the ones affected by the penalties. In practice the judges may be affected very rarely, because presumption and full malice are required *ausus fuerit* and often they are compelled by law to act when requested by the parties.

278. 4°. *Conditions for incurring the penalties.* (*a*) They are incurred by those who "dare;" hence ignorance, even crass and supine, light fear or any cause diminishing in any degree imputability, would suffice to excuse.

(*b*) The ecclesiastics must actually be brought before the lay judge, not simply threatened with it; a mere attempt does not suffice, but it is not necessary that there should be a sentence of condemnation or even a sentence at all.

(*c*) They must be brought before a lay judge acting as such, not before another civil magistrate, nor before a court of arbitration which cannot pronounce a real judicial sentence. (D'Annibale, i, n. 390, 7.)

(*d*) The *Motu Proprio Quantavis diligentia* was interpreted as applying also to the case in which an ecclesiastic was compelled to appear as witness, and it has been concluded by some that the present canon should be interpreted in the same sense and no change in the recently established discipline admitted without clear proof. (C. Augustine l. c.) Others, on the contrary, maintain that citing ecclesiastics as witnesses does not come under the law; such is not the natural meaning of the present canon and of canon 120; if this implies a change it will be in a discipline which was meant to be of temporary character, as it was called forth by special circumstances. (Ferreres l. c.; Pighi, o. c., n. 28; Wernz, n. 336, note 25; F. M. Cappello, De Censuris, n. 93.)

279. (*e*) The *Privilegium Fori* must be in force in the place. After the publication of the *Quantavis diligentia* the Holy See declared that because of preexisting customs or arrangements it did not apply to Germany, Belgium and Holland; canonists concluded that for similar reasons it would not apply to France, Ireland and English-speaking countries generally. The same must be true of the present law.

In the United States by custom and also by the

law of the Plenary Councils of Baltimore, particularly the third (n. 84), it has remained forbidden for priests to sue in civil courts other ecclesiastics, but laymen have been at least implicitly authorized to do so. Therefore priests who would without the regularly required permission bring ecclesiastics before lay judges, would incur the penalties enacted by common law, excommunication or suspension from office; but laymen may be considered as having the Ordinary's necessary permission by custom and implicit general concession. (Ecclesiastical Review, Sept., 1912, p. 312 ff.)

XII. VIOLATION OF THE RELIGIOUS ENCLOSURE

Can. 2342. Plectuntur ipso facto excommunicatione Sedi Apostolicae simpliciter reservata:

1.° Clausuram monialium violantes, cuiuscunque generis aut conditionis vel sexus sint, in earum monasteria sine legitima licentia ingrediendo, pariterque eos introducentes vel admittentes; quod si clerici sint, praeterea suspendantur per tempus pro gravitate culpae ab Ordinario definiendum;

2.° Mulieres violantes regularium virorum clausuram et Superiores aliique, quicunque ii sint, eas cuiuscunque aetatis introducentes vel admit-

C. A. S.— Excommunicationem latae sententiae A. S. simpliciter reservatam incurrunt:

Violantes clausuram Monialium, cujuscunque generis aut conditionis, sexus vel aetatis fuerint, in earum monasteria absque legitima licentia, ingrediendo; pariterque eos introducentes vel admittentes, itemque Moniales ab illa exeuntes extra casus ad formam a S. Pio V in Constit. *Decori* praescriptam.

Mulieres violantes Regularium virorum clau-

tentes; et praeterea religiosi introducentes vel admittentes priventur officio, si quod habeant, et voce activa ac passiva;

3.° Moniales e clausura illegitime exeuntes contra praescriptum can. 601.

suram, et Superiores aliosve eas admittentes.

280. 1. THE LAW OF CANONICAL ENCLOSURE. The term *clausura,* cloister, enclosure, serves to designate, in canon law, an enclosed space reserved to Religious, the barrier which surrounds it, and the legal enactments regulating the admission of outsiders into it or the egress of the Religious from it. (Dictionnaire d'Archéologie, Cloture.)

Originally the law of enclosure seems to have been the same for all Religious, but in the sixteenth century a milder form of enclosure was introduced which canonists called episcopal, chiefly because it had the sanction of episcopal not of papal censures. This discipline is maintained in the present Code.

281. 1°. *Papal Enclosure.* (*a*) In canonically erected houses of regulars, whether of men or of women, the papal enclosure must be observed. (Can. 597.) By regulars are meant professed members of Religious Orders, *i.e.,* of religious organizations in which solemn vows are taken. (Can. 488.)

(*b*) In the enclosure of male regulars, women of whatever age, class or condition shall not be admitted under any pretext. From this law are exempt the wives of actual rulers of nations with their attendants. (Can. 598.)

(*c*) Within the enclosure of nuns or Religious with solemn vows, no one, of whatever class, condition, sex or age, shall be admitted without the permission of the Holy See except the following persons:

The Ordinary or regular superior to make the canonical visitation; the confessor to administer the sacraments to the sick or attend the dying; Cardinals and rulers of nations with their wives and retinue; doctors, surgeons, and other persons whose assistance is needed. (Can. 600.)

(*d*) After profession none of the nuns is allowed to go out of the monastery even for a short time, under whatever pretext, without a special indult from the Holy See, except in case of imminent danger of death or other very serious evil.

282. 2°. *Episcopal Enclosure.* (*a*) Even in the houses of religious congregations, *i.e.,* those in which only simple vows are taken, whether approved by the Holy See or the diocesan authority, the enclosure shall be observed and no one of the other sex shall be admitted into it, except persons who may enter the papal enclosure as said above.

(*b*) The Bishop may, in special circumstances and for grave reasons, enforce this enclosure by censures, except for an exempt, clerical institute or congregation. (Can. 604.)

283. 2. PENALTIES. The Council at Trent (Sess. xxv, c. 5) forbids under pain of excommunication all persons of whatever class, condition, sex or age to enter a monastery of nuns, without a written permission from the Bishop or regular superior.

St. Pius V, in the Constitution *Regularium personarum,* October 24, 1566, enacts also an excommunication *latae sententiae* against all women entering monasteries of men; and a suspension against superiors admitting them.

In the Constitution *Decori,* February 1, 1570, the same Pontiff punishes likewise with excommunication nuns who, outside of certain specified cases of urgent necessity, go out of their monastery; those who give them permission to do so, who accompany them or receive them.

These measures were confirmed by several successive Popes and are now substantially renewed in the Code. It will be noticed that they all have reference to papal enclosure exclusively.

284. 1°. An excommunication *latae sententiae* reserved to the Holy See in a simple manner is incurred by those who, without due permission, enter the enclosure of nuns and by those who introduce or admit them. (Cappello, n. 110.)

(*a*) The enclosure of nuns is a papal enclosure; it can exist only in religious houses in which solemn vows are taken. There are four of these in the United States: the Visitation convents of Georgetown, Mobile, St. Louis and Baltimore. In other houses even nuns who form part of old Religious Orders have only the enclosure imposed by their rule, their vows, diocesan authority, or the common law regarding religious congregations.

(*b*) To incur the excommunication it suffices to enter the enclosure without permission, whatever be the motive for doing so; an evil purpose is not required, as it used to be by some ancient decrees. (S. C. C. Mar. 10, 1602.)

(*c*) The penalty affects women as well as men, whatever by their rank or condition; but age excuses from it as from other censures, and the present text has not here the clause "*cujusvis aetatis.*"

(*d*) It is incurred also by persons who introduce the offenders, *i.e.*, send or invite or bring them in; and by those who admit them, *i.e.*, who allow them to enter when they could and, by reason of their office, should prevent them from coming in.

(*e*) Ecclesiastics offending against this law are to be suspended for a period of time to be determined by the Ordinary according to the gravity of the fault.

285. 2°. Excommunication reserved to the Holy See in a simple manner is incurred by women who encroach upon the enclosure of religious men of solemn vows, and also by superiors or others who introduce or admit them, whatever be their age.

(*a*) A papal enclosure may exist, for example, in the houses of Benedictines, Trappists, Carmelites, Franciscans, Dominicans, and Jesuits, who come under the name of regulars, but not in those of Redemptorists, Lazarists, Marists, or other religious institutes in which only simple vows are taken.

(*b*) This excommunication is incurred not by men, but by women who enter within the enclosure and by any person introducing or admitting them, whoever he may be, superior or janitor, cleric or layman, member of the community or outsider.

(*c*) The impuberes, girls under twelve years of age, are also forbidden to enter the enclosure; their age would excuse them from the censure if they violated the law, but persons introducing or admitting them would incur it.

(*d*) Religious who would introduce or admit women into the monastery, should be deprived of any office they may have and of active and passive vote.

286. 3°. Excommunication reserved to the Holy See in a simple manner is incurred by nuns with solemn vows, who go out of their monastery without legitimate cause or a special indult from the Pope.

(*a*) This censure does not seem to affect novices or Religious who are not yet professed in the Order and have not made the solemn vows, even if they are bound to observe the enclosure. (Pighi n. 53; Cappello, n. 114; Cerato, n. 83.)

(*b*) "Going out" is interpreted in the strict sense; it suffices to be really outside the enclosure even for a short time. Canonists declare that a nun going on the exterior roof of the house or climbing up a tree higher than the enclosing wall, would be going out of the cloister and fall under excommunication. (S. C. EE. et RR. Sept. 18, 1609; D'Annibale, iii, n. 128, 17; Cappello, n. 115.)

(*c*) Boniface VIII (Const. *Periculoso*, 1298; iii, 16, in Sexto) admits only one legitimate reason for nuns to go out of their monastery, *viz.*, sickness. St. Pius V in the Constitution *Decori* enumerates three: fire, leprosy, and epidemic. The Constitution *Apostolicae Sedis* refers to the rule laid down by St. Pius as the one to be followed. (Gennari, Consultations canoniques, xlix.) The present Code speaks in general of imminent danger of death or of some very grave evil. (Pennacchi, i, p. 701–805; Lehmkuhl, ii, n. 954–957; Catholic Encyclopedia, Cloister; Dictionnaire de Théologie Catholique, Cloture.)

XIII. VIOLATION OF THE *PRIVILEGIUM CANONIS*

Can. 2343. § 1. Qui violentas manus in personam Romani Pontificis iniecerit:

1.° Excommunicationem contrahit latae sententiae Sedi Apostolicae specialissimo modo reservatam; et est ipso facto vitandus;

II Lat. Con. C. 15, 1139.— Si quis suadente diabolo hujus sacrilegii reatum incurrit, quod in clericum vel monachum violentas manus injecerit, anathematis vinculo subjaceat: et nullus episcoporum illum praesumat absolvere, nisi mor-

2.° Est ipso iure infamis;

3.° Clericus est degradandus.

§ 2. Qui in personam S. R. E. Cardinalis vel Legati Romani Pontificis:

1.° In excommunicationem incurrit latae sententiae Sedi Apostolicae speciali modo reservatam;

2.° Est ipso iure infamis;

3.° Privetur beneficiis, officiis, dignitatibus, pensionibus et quolibet munere, si quod in Ecclesia habeat.

§ 3. Qui in personam Patriarchae, Archiepiscopi, Episcopi etiam titularis tantum, incurrit in excommunicationem latae sententiae Sedi Apostolicae speciali modo reservatam.

§ 4. Qui in personam aliorum clericorum vel utriusque sexus religiosorum, subiaceat ipso facto excommunicationi Ordinario proprio reservatae, qui praeterea aliis poenis, si res ferat, pro suo prudenti arbitrio eum puniat.

tis urgente periculo, donec apostolico conspectui praesentetur et ejus mandatum suscipiat.

C. A. S.—Excommunicationem R. P. specialiter reservatam incurrunt:

Omnes interficientes, mutilantes, percutientes, capientes, carcerantes, detinentes, vel hostiliter insequentes S. R. E. Cardinales, Patriachas, Archiepiscopos, Episcopos, Sedisque Apostolicae Legatos, vel Nuntios, aut eos a suis Dioecesibus, Territoriis, Terris, seu Dominiis ejicientes, nec non ea mandantes, vel rata habentes, seu praestantes in eis auxilium, consilium, vel favorem.

Excommunicationem simpliciter reservatam incurrunt: Violentas manus, suadente diabolo, injicientes in Clericos, vel utriusque sexus Monachos, exceptis quoad reservationem casibus et personis, de quibus jure vel privilegio permittitur, ut Episcopus aut alius absolvat.

287. 1. Origin of the Legislation. Acts of violence against the clergy or Religious are considered as sacrileges and were punished in the ancient Church with fines, various penances, and at times excommunication. (C. 21–24; C. xvii, 9, 4.)

In the twelfth century the violent attacks of heretical agitators, like Arnold of Brescia and others, upon ecclesiastics and monks so aroused popular passion as to make it necessary to take more stringent measures for the protection of their person.

Innocent II, in the Council of Clermont, 1130 (c. 15), decreed that henceforth any one laying violent hands on clerics or Religious would incur a major excommunication from which the Pope alone could absolve except in danger of death. This was the celebrated canon *Si quis suadente diabolo* which formally sanctioned the privilege for clerics of personal immunity, called also the privilege of canon *Si quis* or simply the privilege of the canon.

Subsequent Councils and Popes have extended or restricted its application according to the needs of the times, but it has remained in force to the present day.

288. 2. Present Law. The New Code punishes more severely attacks on the person of the Pope and mitigates the penalty for injury done to the lower clergy, so as to distinguish three or even four degrees of gravity in the violation of clerical immunity, according to the dignity of the persons against whom the offence is committed. Accomplices or cooperators do not incur the penalties, nor the impuberes. With these few differences, the new law confirms the provisions of the former one and will have to be interpreted in the same sense.

289. 3. Penalties. 1°. Any one who lays violent hands on the person of the Roman Pontiff:

(*a*) Incurs an excommunication *latae sententiae* reserved to the Apostolic See in a most special manner and is *ipso facto vitandus.* This is one of the few censures which are reserved in a most special manner and the only case in which one becomes *vitandus* without any sentence or denunciation.

(*b*) The same becomes legally infamous.

(*c*) If he be a cleric he ought, besides, to be degraded.

2°. Any one who lays violent hands on the person of a Cardinal, or of a Legate of the Pope:

(*a*) Incurs an excommunication *latae sententiae* reserved to the Holy See in a special manner;

(*b*) He is *ipso facto* legally infamous;

(*c*) He should be deprived of benefices, offices, dignities, pensions and any functions he may have in the Church.

290. 3°. He who lays violent hands on the person of a Patriarch, Archbishop, Bishop, even merely titular, incurs *ipso facto* an excommunication reserved to the Holy See in a special manner. In this case there is no vindictive penalty or censure *ferendae sententiae* imposed upon the offender by law.

4°. Those who lay violent hands on the person of clerics of lower rank or Religious of either sex, fall *ipso facto* under an excommunication reserved to their Ordinary, who is empowered besides to inflict upon them other punishments, if in his prudence he judges that the case calls for it.

(*a*) The Code calls clerics those who are consecrated to the sacred ministry by the reception of at least the first tonsure. (Can. 108.) Ecclesiastical students or other persons who have not received the tonsure are not included, whatever may be their functions in the Church.

(*b*) The clerical privileges are enjoyed by all members of Religious Orders or congregations, whether men or women, with solemn or simple vows, lay or cleric; no distinction is made. This includes novices, as is explicitly stated (can. 614); but postulants are not mentioned, which is equivalent to exclusion. (Can. 539.)

They are enjoyed also by persons belonging to societies, whether of men or of women, whose members imitate the manner of life of Religious, by living in community under the government of superiors according to approved constitutions but without being bound by the usual three vows. (Can. 680.) If the same conditions are fulfilled by members of third Orders, hermits, or sodalists, they too enjoy these privileges and are protected by this censure, but not otherwise.

291. 4. CONDITIONS FOR INCURRING THE PENALTIES. They are implied in the expression "laying violent hands" which is rather metaphorical and must be interpreted, as it has always been interpreted, in a broad, comprehensive sense.

(*a*) It implies that a real, as distinct from personal, injury must be inflicted on a cleric or Religious, one by deed and external action, not by word alone, affecting him in his body or his liberty or his dignity, as, for example, striking him, depriving him of his freedom, treating him in an externally irreverential manner. It would not matter whether he was struck with the hand, a sword, or the foot, by means of fire-arms, etc.

(*b*) The "violence" is not so much in the intensity of the physical action as in its injustice; hence the penalties would not be incurred by one acting in self-defence or taking a just revenge on an offender.

(*c*) The act must be gravely injurious, both materially and formally. It may be light in itself and yet grave as an irreverence. A very light wound inflicted on a prelate, and still more on the Pope, would, if due to malice, always be a grave injury.

(*d*) The injury must be done knowingly and intentionally, but not necessarily out of hatred for the person injured. One who would act in the name of, or at the request of another, or for a motive of gain, would not escape the penalty; as said before, those who command, counsel, encourage or approve the deed, are not affected by the present law, since they are not mentioned in any way.

XIV. PERSONAL OFFENCES AGAINST CHURCH DIGNITARIES (Can. 2344.)

Can. 2344. Qui Romanum Pontificem, S. R. E. Cardinalem, Legatum Romani Pontificis, Sacras Congregationes Romanas, Tribunalia Sedis Apostolicae eorumque Officiales maiores, proprium Ordinarium, publicis ephemeridibus, concionibus, libellis sive directe sive indirecte, iniuriis affecerit, aut simultates vel odia contra eorundem acta, decreta, decisiones, sententias excitaverit, ab Ordinario non solum ad instantiam partis, sed etiam ex officio adigatur, per censuras quoque, ad satisfactionem praestandam, aliisve congruis poenis vel poenitentiis, pro gravitate culpae et scandali reparatione, puniatur.

292. Attacks on the neighbor's reputation, honor, or character, *i.e.,* personal as distinct from real injuries, are also delinquencies often and severely punished in ancient canons. (C. 5. D. 46; C. 1, 2; C. v, q. 1.) The Decretals have two distinct titles on the subject. (De Maledicis, De Injuriis, v, 26, 36.)

Much of this legislation was merely local or had fallen into desuetude with the change of social conditions. The Code renews only some of its provisions adapting them to present needs.

1°. The persons whom this canon is intended to protect belong to the highest ranks of the hierarchy: the Pope, the Cardinals, Apostolic legates, the Sacred Congregations, the Roman Tribunals and their major Official, and the Ordinary of the possible offenders.

2°. The abuses at which the law strikes here consist in injurious attacks, direct or indirect, against the prelates, in the public press or speeches or libels; or in denunciations calculated to excite animosity against their acts, decrees, decisions, or sentences.

3.° The penalties are *ferendae sententiae* and left to the judgment of the Ordinary. He is to proceed *ex officio* against the delinquents, when the offended parties do not sue them, and oblige them to make proper reparation, making use even of censures or of other punishments and penances, as the gravity of the fault and the scandal given may demand.

XV. ENCROACHMENT UPON THE RIGHTS AND PROPERTY OF THE ROMAN CHURCH

Can. 2345. Usurpantes vel detinentes per se vel per alios bona aut iura ad Ecclesiam Romanam pertinentia, subiaceant excommunicationi latae sententiae speciali modo Sedi Apostolicae reservatae; et si clerici fuerint, praeterea dignitatibus, beneficiis, officiis, pensionibus priventur atque

C. A. S.— Excommunicationem R. P. speciali modo reservatam incurrunt ipso facto: Invadentes, destruentes, detinentes per se vel per alios Civitates, Terras, loca aut jura ad Ecclesiam Romanam pertinentia; vel usurpantes, perturbantes, retinentes supremam jurisdictionem

inhabiles ad eadem declarentur.

in eis; nec non ad singula praedicta auxilium, consilium, favorem praebentes.

293. 1°. This canon refers to the temporal property and rights of the Roman Church. As it stood in the Constitution *Apostolicae Sedis* many canonists applied it exclusively to what formed the temporal dominion of the Holy See. Its present wording admits of a broader interpretation.

2°. The penalty remains, as before, excommunication reserved to the Holy See in a special manner; and when the offenders are clerics they must, besides, be deprived of whatever dignities, benefices, offices and pensions they may have, and declared incapable of acquiring them in future.

3°. These penalties are incurred by those who usurp or hold, by themselves or through others, property or rights belonging to the Roman See.

Three conditions are demanded by canonists for usurpation in the strict sense: that the object be really taken possession of, that this be done by dispossessing the true owner, that the object be held as the usurper's own. A thief is not a usurper. (H. O., Mar. 9, 1870.) According to some authors, private individuals cannot be guilty of usurpation, but only persons in authority. (Pennacchi, p. 364; Ballerini, 435; Pighi, n. 32; Cappello, n. 97.)

The holders are those who actually have the object in their possession, whatever be the manner in which it came into their hands.

The penalties remain the same when the property is usurped or held through others. Accomplices are not affected under the present law.

XVI. CONFISCATION AND APPROPRIATION OF ECCLESIASTICAL PROPERTY

Can. 2346. Si quis bona ecclesiastica cuiuslibet generis, sive mobilia sive immobilia, sive corporalia sive incorporalia, per se vel per alios in proprios usus convertere et usurpare praesumpserit aut impedire ne eorundem fructus seu reditus ab iis, ad quos iure pertinent, percipiantur, excommunicationi tandiu subiaceat, quandiu bona ipsa integre restituerit, praedictum impedimentum removerit, ac deinde a Sede Apostolica

Conc. Trid., Sess. xxii, c. 11, de Ref.— Si quem clericorum vel laicorum, quacumque is dignitate, etiam imperiali aut regali, praefulgeat, in tantum malorum omnium radix cupiditas occupaverit, ut alicujus ecclesiae, seu cujusvis saecularis vel regularis beneficii, montium pietatis, aliorumque piorum locorum jurisdictiones, bona, census ac jura, etiam feudalia et emphyteutica, fructus, emolumenta, seu quascumque obventiones, quae in ministrorum et pauperum necessitates converti debent, per se vel alios, vi vel timore incusso, seu etiam per suppositas personas clericorum aut laicorum, seu quacumque arte aut quocumque quaesito colore in proprios usus convertere, illosque usurpare praesumpserit, seu impedire, ne ab iis ad quos jure pertinent, percipiantur, is anathemati tamdiu subjaceat, quamdiu jurisdictiones, bona, res,

absolutionem impetraverit; quod si eiusdem ecclesiae seu bonorum patronus fuerit, etiam iure patronatus eo ipso privatus exsistat; clericus vero, hoc delictum committens vel in eodem consentiens, privetur praeterea beneficiis quibuslibet, ad alia quaelibet inhabilis efficiatur et a suorum ordinum exsecutione, etiam post integram satisfactionem et absolutionem, sui Ordinarii arbitrio suspendatur.

jura, fructus et redditus, quos occupaverit, vel qui ad eum quomodocumque, etiam ex donatione suppositae personae pervenerint, ecclesiae ejusque administratori, sive beneficiato, integre restituerit, ac deinde a Romano Pontifice absolutionem obtinuerit. Quod si ejusdem ecclesiae patronus fuerit, etiam jure patronatus ultra praedictas poenas eo ipso privatus existat. Clericus vero, qui nefandae fraudis et usurpationis hujusmodi fabricator, seu consentiens fuerit, eisdem poenis subjaceat, nec non quibuscumque beneficiis privatus sit, et ad quaecumque alia beneficia inhabilis efficiatur, et a suorum Ordinum executione, etiam post integram satisfactionem et absolutionem, sui Ordinarii arbitrio suspendatur.

(Gennari, Consultations Morales, I; Canoniste Contemporain, April, 1909, p. 216; Cappello, n. 116; Lehmkuhl, II, n. 967.)

294. 1°. *Purpose of the law.* The purpose of this canon, as of the Decree of the Council of Trent which it renews with only accidental modifications, is to protect ecclesiastical property, not against common ordinary theft, but against usurpation or confiscation, *i.e.*, against spoliation perpetrated in the name of law and with a semblance or claim of legal right. It strikes, therefore, usurpers and other persons who continue the usurpation by appropriating to their own use confiscated property, or preventing the legitimate owner from obtaining the fruits or income thereof.

295. 2°. *Its object.* The ecclesiastical property protected by this canon includes all that belongs to the Church, or to pious institutions which have been erected and are administered by, or under the control of, the Church; for example, chapels, sanctuaries, seminaries, monasteries, schools, hospitals. The property must actually belong to the Church; a *jus ad rem* does not suffice. It may be movable or immovable, corporeal, like money; or incorporeal, like bonds, stock. Some ancient canonists made a distinction between goods called precious or of special value, religious, artistic or historical, and ordinary ones. There is no positive foundation for it in the text, and the words of the present canon "*cujuslibet generis*" rather exclude it.

296. 3°. *Penalties.* (*a*) A first and general penalty is excommunication *latae sententiae* reserved to the Pope in a simple manner, from which absolution cannot be obtained unless the confiscated property be first restored, or the obstacle which prevented the legitimate owner from exercising his right be removed.

(*b*) If the offender has a right of patronage over this property he loses it.

(*c*) If a cleric becomes guilty of these delinquencies or consents to them, besides incurring the censure, he is to be deprived of all benefices, declared incapable of acquiring any in future and suspended from the exercise of his Orders, even after he has made reparation and obtained absolution, as long as his Ordinary may decide.

297. 4°. *By whom they are incurred.* The Council of Trent mentions explicitly only clerics and laymen as liable to them; whence it was concluded that the law did not apply to Religious, nor probably to Bishops. The present text is more general and implies that the penalties may be incurred by all classes of persons. They are incurred by:

(*a*) The usurpers or authors of the confiscation, unless they fall under the specially reserved excommunication pronounced against those who enact laws or decrees contrary to the rights of the Church.

(*b*) All who appropriate to their own use the confiscated property, whatever be the way in which it came into their possession, whether they bought or inherited or rented it, or received it as a donation, etc.

(*c*) Those who prevent the churches or pious institutions from receiving the fruits of the confiscated property; for example, rent from houses, income from investments.

(*d*) The *mandantes* in whose name or by whose order these delinquencies are committed and clerics consenting to them, but not other cooperators. (Penitent., Sept. 17, 1906.)

The penalties are not incurred by ordinary thiefs of ecclesiastical property (S. C. C., Feb. 27, 1686; H. O. Mar. 9, 1870); nor by city officials who acquire confiscated ecclesiastical property for the city, not for themselves. (Pen., Jan. 3, 1906.) Private persons buying it afterward from the city would incur them; but not if they bought only the natural fruits thereof in the public market. (Pen., Aug. 5, 1907.)

In all cases presumption is required and light fear or ignorance, even crass and supine, either of the law or of the penalty, would excuse.

XVII. ILLEGITIMATE ALIENATION OF ECCLESIASTICAL PROPERTY

Can. 2347. Firma nullitate actus et obligatione, etiam per censuram urgenda, restituendi bona illegitime acquisita ac reparandi damna forte illata, qui bona ecclesiastica alienare praesumpserit aut in iis alienandis consensum praebere contra praescripta can. 534, § 1, et can. 1532:

1.° Si agatur de re cuius pretium non excedit mille libellas, congruis poenis a legitimo Superiore ecclesiastico puniatur;

2.° Si agatur de re cuius pretium sit supra mille, sed infra triginta millia libellarum, privetur patronus iure patronatus; administrator, munere administratoris; Superior vel oeconomus religiosus, proprio officio et habilitate ad cetera officia, praeter alias con-

C. A. S.—Excommunicationem latae sententiae nemini reservatam incurrunt: Alienantes et recipere praesumentes absque beneplacito Apostolico, ad formam

gruas poenas a Superioribus infligendas; Ordinarius vero aliique clerici, officium, beneficium, dignitatem, munus in Ecclesia obtinentes, solvant duplum favore ecclesiae vel piae causae laesae; ceteri clerici suspendantur ad tempus ab Ordinario definiendum;

3.° Quod si beneplacitum apostolicum, in memoratis canonibus praescriptum, fuerit scienter praetermissum, omnes quovis modo reos sive dando sive recipiendo sive consensum praebendo, manet praeterea excommunicatio latae sententiae nemini reservata.

Extravagantis Ambitiosae de Rebus Ecclesiasticis non alienandis. (Extr. Com., iii, Tit. 4, cap. unic.)

298. 1. LAW ON ALIENATION OF CHURCH PROPERTY. 1°. For the alienation of immovable ecclesiastical goods and of movable goods which can be preserved, one of the essential conditions is permission from the legitimate superior. (Can. 1530.)

(*a*) The legitimate superior is the Holy See when it is question of alienating precious things or goods which exceed thirty thousand francs in value, about six thousand dollars. (Can. 1532.) Things may be precious by reason of the material of which they are made, or of their antiquity, or of artistic excellence (can. 1497); for example, ancient vestments, gold vessels, rare books, even though their market value might not be very high.

(*b*) When the value of the property to be disposed of does not exceed one thousand francs, the Ordinary may give the necessary authorization after consulting the board of administration and obtaining the consent of the parties concerned, the pastor, the rector, the prelate, etc.; this last formality is not obligatory for very small contracts.

(*c*) If the property is valued at between one thousand and thirty thousand francs, the Ordinary of the place may also give permission with the consent of the cathedral chapter, here of the diocesan consultors, the council of administration, and the parties concerned. (Can. 1532.)

(*d*) In religious institutes, the permission of the Holy See is required for the alienation of precious things or of goods which exceed thirty thousand francs in value; as also for contracting debts over and above that sum. In all other cases the permission may be granted by the superior with the consent of his chapter or council, given in secret ballot and as prescribed by the Constitutions.

Nuns and sisters of diocesan orders must, besides the permission of the superior, obtain the written authorization of the Ordinary of the diocese and of the regular prelate, if they are subject to one. (Can. 534.)

299. 2°. These permissions are required not only for alienation strictly so called, but also for any contract by which the condition of the Church may be impaired, for example, donations, exchanges, mortgages, etc. (Can. 1533.) It is explicitly provided, however, that to change notes payable to bearer into other investments at least equally safe and fruitful, the administrators need only the consent of the Ordinary, of the council of administration, and of the interested parties. (Can. 1539; cf. S. C. C. Jan. 17, 1906.)

300. 2. Sanctions. 1°. Alienation of ecclesiastical property without the required permissions is null and void. The illegitimately acquired goods ought to be given back and reparation made for whatever injury may have been caused thereby. This obligation is to be enforced even by means of censures if necessary.

2°. The offender who has presumed to alienate ecclesiastical property, without due authorization, and the one who has consented to it are liable to the following punishments:

(*a*) The penalty is left to the discretion of the legitimate ecclesiastical superior, if the object of the transaction was not worth more than one thousand francs.

(*b*) If its value is over one thousand and under thirty thousand francs, the punishment varies according to the position of the offender: a patron loses the right of patronage; an administrator, his function; a superior or procurator in a Religious Order, his office and eligibility to any other offices; the Ordinary and other ecclesiastics having an office, benefice, dignity or function in the Church, have to pay double the price due to the Church or pious institute for the injury done; other clerics are to be suspended for a period of time fixed by the Ordinary.

(*c*) In cases in which permission from the Holy See was required by law and has been deliberately omitted, there is the additional penalty of excommunication *latae sententiae,* which, however, is not reserved. This penalty is incurred not only by those who alienate Church property or consent to the transaction, but also by the other parties, *viz.,* those who buy or receive it.

301. 3°. It is to be noted (*a*) that presumption is required to incur the penalties; it must be known that the matter of the transaction is ecclesiastical property, that permission is necessary to dispose of it, and that it is necessary under pain of censure or other punishments.

(*b*) The law is formulated in general terms and applies to all, laymen, clerics, Religious, even Bishops, since the Ordinary is explicitly mentioned.

(*c*) Nor does the present text imply that when the property is transferred from one church to another or without any loss to the church or pious institute the law does not apply. (Cappello, n. 139.)

(*d*) The *Extravagant Ambitiosae,* and consequently the Constitution *Apostolicae Sedis,* prohibited, under the same penalties as alienation, the renting, for more than three years, leasing, and mortgaging of ecclesiastical property and similar contracts, "*omne pactum per quod eorum dominium transfertur, concessionem, hypothecam, locationem et conductionem necnon infeudationem.*" The present canon speaks explicitly only of alienation, and the canons to which it refers formally deal also with alienation. (Can. 534, § 1; can. 1532.) It is true that the same formalities are required for all contracts "by which the condition of the Church can be impaired" (can. 1533), as for alienation strictly so called. They are required particularly for loans (can. 534; can. 1538), mortgages (can. 1538), leases and renting (can. 1541–1542); still the Code treats separately of these contracts and of alienation, and they are distinguished from alienation properly so called. (Can. 1533.) Now in penal matters the text of the law is to be interpreted in its strict sense, and penalties are not to be extended from case to case, although there be the same or even a better reason. (Can. 2219.)

(*e*) The omission of other formalities in alienation of Church property is not punished by the present canon as long as due permission has been obtained. — By a decree of C. P. F. of September 25, 1885, the Bishops of the United States were dispensed *ad decennium* from the obligation of recourse to the Holy See in every case. (III Balt. Coun. p. ciii, n. 20.)

XVIII. NEGLECTING TO EXECUTE PIOUS LEGACIES

Can. 2348. Qui legatum vel donationem ad causas pias sive actu inter vivos sive testamento, etiam per fiduciam, obtinuerit et implere negligat, ab Ordinario, etiam per censuram, ad id cogatur.

302. The wishes of the faithful who bequeath their possessions to the Church or religious institutions should be strictly carried out. This obligation rests first on those who receive legacies, or donations, or also property in trust, for pious purposes. Should they neglect to comply with it, the Ordinary is to compel them to do so, by means of censures if necessary.

Even when a testament made in favor of religion is lacking in some of the formalities required by civil law, the heirs or executors should be admonished to fulfill the will of the testator. (Can. 1513; Ferreres, l.c., ii, n. 485.)

XIX. REFUSING LEGITIMATE TAXES OR CONTRIBUTIONS

Can. 2349. Recusantes praestationes legitime debitas ad normam can. 463, § 1, 1507, prudenti arbitrio Ordinarii puniantur, donec satisfecerint.

303. A pastor has a right to the revenue to which legitimate custom or legal taxation entitles him (can. 463, § 1); the Ordinaries of dioceses are to draw up a schedule of taxes or stipends for funeral services in their territory if one does not exist already (can. 1234); the stipends assessed for the various acts of voluntary jurisdiction, like granting of dispensations or other favors, for the execution of Apostolic rescripts, those which may be exacted on occasion of the administration of sacraments and sacramentals, are to be fixed by the Provincial Council or in the meeting of the Bishops, for the whole province, and approved by the Holy See. (Can. 1507.) Once they have received such sanction, they become obligatory and the Ordinaries are to enforce the obligation by the use of such penalties as their prudence will suggest.

TITLE XIV

DELINQUENCIES AGAINST LIFE, LIBERTY, PROPERTY, REPUTATION, MORALS

I. ABORTION AND SUICIDE

Can. 2350. § 1. Procurantes abortum, matre non excepta, incurrunt, effectu secuto, in excommunicationem latae sententiae Ordinario reservatam; et si sint clerici, praeterea deponantur.

§ 2. Qui in seipsos manus intulerint, si quidem mors secuta sit, sepultura ecclesiastica priventur ad normam can. 1240, §1, n. 3; secus, arceantur ab actibus legitimis ecclesiasticis et, si sint clerici, suspendantur ad tempus ab Ordinario definiendum, et a beneficiis aut officiis curam animarum interni vel externi fori adnexam habentibus removeantur.

304. 1. ABORTION. 1°. Those who effectively cause abortion incur an excommunication reserved to the Ordinary, and if they are clerics they should besides be deposed. The excommunication is *latae;* the deposition, *ferendae sententiae.*

2°. To incur the penalties there must be real abortion, *i.e.,* the ejection from the womb of the mother, of a living foetus which is not viable or before the twenty-eighth week of pregnancy. Causing premature birth or the birth of a child which is viable, before the regular term, is not causing abortion. Nor do operations of craniotomy, embryotomy and others of a similar nature come under this law, criminal though they be.

3°. The abortion must be "procured," *i.e.,* caused deliberately, of set purpose, intended directly. One who would strike a pregnant woman knowing what the consequences may be, but not intending them, does not fall under the law even if the result be abortion. On the other hand, it does not matter what means may have been used, whether drugs, blows, fear, or surgical operation, as long as they have been used for that purpose and have proved efficacious. (Cappello, n. 132.)

305. 4°. There is no longer any doubt that the mother who causes the immature birth of her own child incurs these penalties, all conditions being fulfilled. She would be excused if she acted under the influence of grave fear.

Commonly canonists hold that the *mandantes,* those in whose name, at whose command or request the abortion is caused are affected by the law. Some, however, deny it. (Santi, Lib. v, tit. x, n. 8.) The present law has not here the clause, frequently found in its canons, "*per se vel per alios,*" which would seem to imply that the *mandantes* are not included. Other secondary cooperators are certainly not, as, for example, those who advise the act, those who supply the means, who teach how to proceed, etc. (Cerato, n. 72.)

As to those who act for others, doctors who administer the medicine, surgeons who perform the operation on request, the opinions of canonists are again divided (can. 2231); some excuse them from the ecclesiastical penalties. (Pennacchi, ii, p. 34; Catholic Encyclopedia, Abortion; Dictionnaire de Théologie Catholique, Avortement; Wernz, n. 369.)

306. 2. Suicide. 1°. Persons who have taken their own life are deprived of Christian burial unless they give signs of repentance before dying. Should they have failed in their attempt and survive, they are to be excluded from the legitimate ecclesiastical acts. Clerics guilty of that crime are to be suspended for a period of time to be determined by the Ordinary of the place, and removed from the offices to which is attached the care of souls, whether of the internal or external forum.

2°. The crime of self-destruction supposes malice; if the death was due to accident or to insanity, even temporary, the penalties would not be incurred; but anger or despair does not excuse from them. A person acting under the influence of these passions would still be considered as a suicide in the external ecclesiastical forum. (Wernz, n. 374.)

Malice is not presumed but should be certain. A man's death is not supposed to be due to suicide rather than to accident or some other cause, unless it be proved conclusively. On the other hand, if it is certain that the party has killed himself, he will not be supposed insane unless there be some evidence of it. When full guilt is doubtful Christian burial is not refused.

II. DUELLING

Can. 2351. § 1. Servato praescripto can. 1240, § 1, n. 4, duellum perpetrantes aut simpliciter ad illud provocantes vel ipsum acceptantes vel quamlibet operam aut favorem praebentes, nec non de industria spectantes illudque permittentes vel quantum in ipsis est non prohibentes, cuiuscunque dignitatis sint, subsunt ipso facto excommunicationi Sedi Apostolicae simpliciter reservatae.

§ 2. Ipsi vero duellantes et qui eorum patrini vocantur, sunt praeterea ipso facto infames.

C. A. S.—Excommunicationem latae sententiae S. S. simpliciter reservatam incurrunt:

Duellum perpetrantes, aut simpliciter ad illud provocantes, vel ipsum acceptantes, et quilibet complices, vel qualemcunque operam aut favorem praebentes, nec non de industria spectantes, illudque permittentes, vel quantum in illis est, non prohibentes cujuscunque dignitatis sint, etiam regalis vel imperialis.

307. 1°. *Notion.* A duel is a premeditated and prearranged combat between two or more persons, in equal number on each side, with deadly weapons involving serious danger of death, grave wound or mutilation, for the purpose of settling a private quarrel.

(*a*) The contest must be prearranged as to time, place and arms. (Gregory XIII, Const. *Ad tollendum,* Dec. 5, 1852, § 1; Clement VIII, Const. *Illius vices,* Aug. 17, 1592, § 3; Wernz, n. 379.)

(*b*) A duel is generally fought between two persons, but there might be two, three, or more on each side. (Clement VIII, l.c., n. 5.) Seconds are usually present, but they are not essential.

(*c*) The weapons used must be capable of inflicting serious wounds so that there be serious danger of death or of grave mutilation. Duels as they are fought between university students in Germany were declared to be duels in the sense of the ecclesiastical law. (S. C. C. Aug. 9, 1890.)

(*d*) The duel must be fought on private authority and for some private cause, like avenging a personal insult, defending the honor of a private individual.

308. 2°. *Ancient Discipline.* Duelling, unknown to the Greeks and Romans, seems to have originated among the Germans and Gauls. The custom was firmly rooted before they became Christians and persisted after their conversion. The Church protested against it from the beginning; several Popes condemned it, including Nicholas I and Stephen VI, in the ninth century, and later, Alexander II, Innocent III, Julius II, and others.

In the sixteenth century duelling had become such an abuse that the Council of Trent deemed it necessary to enact severe penalties against princes who permitted it in their territories and all who took part in it. The latter incurred an excommunication *latae sententiae,* together with their accomplices, seconds, witnesses and advisers. (Sess. xxv, c. 19, de Ref.)

Benedict XIV decreed that duellists would be refused Christian burial, even if they received absolution before death. Clerics were deprived of their benefices and disqualified for others. (Pius IV, Const. *Ea quae,* Nov. 13, 1560, § 4.) In the Constitution *Apostolicae Sedis* the excommunication reserved to the Pope in a simple manner is maintained against duellists.

309. 3°. *Present law.* The present law mitigates the former discipline in one point but otherwise leaves it unchanged:

(*a*) Duellists are deprived of Christian burial if they die without showing signs of repentance.

(*b*) An excommunication reserved to the Holy See is incurred as before by duellists and their accomplices, that is, by persons who fight duels or challenge to a duel or accept such a challenge; by those also who encourage duelling in any way, for example, by a doctor who at the request of the parties would remain near by, ready to give assistance; by those who assist at it as spectators — *de industria* — and by those who permit it or fail to forbid it as far as they can.

(*c*) The duellists and their seconds incur besides legal infamy. (Pennacchi, i, p. 536; Many, in Canoniste Contemporain, 1896, p. 525–555; Catholic Encyclopedia, Duel.)

III. INTERFERENCE WITH THE FREEDOM OF CLERICAL OR RELIGIOUS VOCATION

Can. 2352. Excommunicatione nemini reservata ipso facto plectuntur omnes, qualibet etiam dignitate fulgentes, qui quoquo modo cogant sive virum ad sta-

Conc. Trid. Sess. xxv, c. 18. Anathemati Sancta Synodus subjicit omnes et singulas personas, cujuscumque qualitatis vel conditionis fuerint, tam clericos

tum clericalem amplectendum, sive virum aut mulierem ad religionem ingrediendam vel ad emittendam religiosam professionem tam solemnem quam simplicem, tam perpetuam quam temporariam.

quam laicos, seculares vel regulares, atque etiam qualibet dignitate fulgentes, si quomodocumque coegerint aliquam virginem, vel viduam, aut aliam quamcumque mulierem invitam, praeterquam in casibus in jure expressis, ad ingrediendum monasterium, vel ad suscipiendum habitum cujuscumque religionis, vel ad emittendam professionem . . . et eorum complices.

Simili quoque anathemati subjicit eos qui sanctam virginem vel aliarum mulierum voluntatem veli accipiendi, vel voti emittendi, quoquo modo sine justa causa impedierint.

310. An excommunication, not reserved to any one, is now incurred *ipso facto* by any person, whatever be his dignity, who, by whatever means, forces either a man to embrace the clerical state, or a man or woman to enter a religious institute or to make a religious profession, whether solemn or simple, perpetual or temporary.

1°. This canon in some respects restricts, in others extends, the law of Trent. It protects the freedom of the clerical or religious vocation of men, as well as the freedom of the religious vocation of women;

the freedom of simple as well as solemn, of temporary as well as perpetual, religious profession. But it has no provision against those who prevent a person from entering a Religious Order and does not include the accomplices.

2°. The excommunication affects all persons, whatever be their dignity, laymen, clerics, religious superiors, prelates; not Cardinals, since they are not mentioned explicitly; and whatever be the means by which they have exercised undue influence, whether by physical violence, threats, reverential fear, fraud or deceit.

3°. It is incurred by those who force, *cogentes,* which supposes grave interference with freedom, as may result, for example, from that fear which is commonly considered as grave, absolutely or relatively; and it is incurred not at the time violence is done or threats made, but when the victim actually embraces the ecclesiastical state, which is canonically by the reception of tonsure, or enters a Religious Order or Congregation, or makes religious profession. Forcing a person to enter one of the societies in which no vows are taken, does not come under this law. If a person had entered the Religious Order freely and was afterward forced to make profession against his will, the censure would be incurred.

IV. ABDUCTION

Can. 2353. Qui intuitu matrimonii vel explendae libidinis causa rapuerit mulierem nolentem vi aut dolo, vel mulierem minoris aetatis consentientem quidem, sed insciis vel contradicentibus

Conc. Trid. Sess. xxiv, c. vi, de Ref. Mat.—Decernit Sancta Synodus, inter raptorem et raptam, quamdiu ipsa in potestate raptoris manserit, nullum posse consistere matrimonium.

parentibus aut tutoribus, ipso iure exclusus habeatur ab actibus legitimis ecclesiasticis et insuper aliis poenis pro gravitate culpae plectatur.

. . . Raptor ipse ac omnes illi consilium et favorem praebentes, sint ipso jure excommunicati, ac perpetuo infames, omniumque dignitatum incapaces; et si fuerint clerici, de proprio gradu decidant.

311. 1°. *Notions.* Abduction may be considered as a crime or as a marriage impediment. (*a*) As a crime it consists in carrying off a person against his will from a place of safety into another in which he is in the captor's power. Or, in a stricter and more usual sense, it may be defined as the carrying off or taking away of a virtuous woman from a free and safe place to another place morally different, where she is under the abductor's control for the purpose of marriage or gratification of lust. It is called abduction by violence when the woman is carried off against her will, by force or deceit; and abduction by seduction or elopement when she is taken away with her own consent, but without the knowledge or consent of her parents or guardians.

(*b*) Abduction as a marriage impediment is abduction by violence with a view to marriage; by the present law, violent detention is assimilated to abduction. (Can. 1074, § 3.)

2°. *Former discipline.* In the Justinian Code the punishment for abductors and their accomplices is death and confiscation of all their property. Several Particular Councils in the fourth century impose upon abductors the penalties of public penance, confiscation of property, excommunication and, if they are clerics, deposition from their rank.

This legislation fell gradually into desuetude; but in the sixteenth century as abuses multiplied again the Council of Trent found it necessary to renew at least some of its provisions. Besides pronouncing invalid the marriage between the abductor and the abducted, it decrees that the abductor, with all his advisers, accomplices and abettors, is excommunicated *ipso jure,* declared forever infamous and incapable of acquiring dignities, and, if he is a cleric, deposed from his ecclesiastical rank. As is clearly seen from the text, the Council deals here exclusively with that form of the crime of abduction which gives rise to an impediment, *i.e.,* abduction by violence with a view to marriage.

312. 3°. *Present Law.* The present canon is of wider scope but lesser severity than the Decree of Trent.

(*a*) It punishes abduction whether by violence or by seduction, whether with intent to marry or to gratify lust.

Under the ancient discipline, only the carrying off of a virtuous woman was treated as abduction proper. In the law of Trent no distinction is made and the impediment has always been understood to arise independently of the character of the party concerned. There is no apparent reason for interpreting the present canon differently.

On the other hand, ancient canonists admitted abduction by seduction of a woman who was of age, whilst the present law explicitly demands for a punishable offence that the victim of seduction be a minor.

(*b*) Abductors are excluded from the legitimate ecclesiastical acts, besides the other punishments which may be inflicted on them according to the gravity of the fault. The excommunication enacted against them by the Council of Trent is not maintained and accomplices are not mentioned. (Wernz, n. 404; Ballerini-Palmieri, ii, n. 1012; Catholic Encyclopedia, Abduction.)

V. CRIMES AGAINST THE NEIGHBOR'S PERSON, LIBERTY, AND PROPERTY

Can. 2354. § 1. Laicus qui fuerit legitime damnatus ob delictum homicidii, raptus impuberum alterutrius sexus, venditionis hominis in servitutem vel alium malum finem, usurae, rapinae, furti qualificati vel non qualificati in re valde notabili, incendii vel malitiosae ac valde notabilis rerum destructionis, gravis mutilationis vel vulnerationis vel violentiae, ipso iure exclusus habeatur ab actibus legitimis ecclesiasticis et a quolibet munere, si quod in Ecclesia habeat, firmo onere reparandi damna.

§ 2. Clericus vero qui aliquod delictum commiserit de quibus in § 1, a tribunali ecclesiastico puniatur, pro diversa reatus gravitate, poenitentiis, censuris, privatione officii ac beneficii, dignitatis, et, si res ferat, etiam depositione; reus vero homicidii culpabilis degradetur.

313. 1°. Ecclesiastical law, besides exacting due reparation, enacts against all laics found guilty of the delinquencies here listed, the penalty of exclusion from the legitimate acts and from all functions they might exercise in the Church:

(*a*) Homicide, unjust, voluntary and consummated. (Wernz, n. 362, ff.)

(*b*) Abduction of persons of either sex under the age of puberty; this is usually understood of abduction by force or deceit, whatever may be the purpose of the abductor.

(*c*) Selling a man into servitude or for some other evil end. This is the crime often referred to in ancient canons under the name of plagium.

(*d*) Usury, as understood and condemned by modern legislation.

(*e*) Rapine or plunder, which implies the use of violence or open force.

(*f*) Theft qualified, *i.e.*, accompanied with aggravating circumstances; or unqualified but in very grave matter.

(*g*) Incendiarism or destruction of property of very great value.

(*h*) Grave mutilation, or wounding, or assault.

As these delinquencies affect religious as well as civil society, ecclesiastical tribunals would be competent to pass judgment upon them; in modern times they are generally left to the civil court for trial when they have been committed by laymen; but the Church adds her own sanction as a reparation for the injury done to the Christian community.

314. 2°. If it happens that clerics have been guilty of some of these crimes, their case is regularly to be tried by the ecclesiastical court and they are to be punished according to their guilt with penances, censures, privation of office, benefice or dignity and even deposition, when the offence is particularly grave. A cleric guilty of homicide is to be degraded.

Often, either by concession of the Holy See or abuse of power on the part of the civil authority, clerics are brought before lay judges and punished by them; the ecclesiastical punishments then are applied more leniently.

VI. BIGAMY

Can. 2356. Bigami, idest qui, obstante coniugali vinculo, aliud matrimonium, etsi tantum civile, ut aiunt, attentaverint, sunt ipso facto infames; et si, spreta Ordinarii monitione, in illicito contubernio persistant, pro diversa reatus gravitate excommunicentur vel personali interdicto plectantur.

315. 1°. *Nature.* A bigamist is a person who has formed two matrimonial unions, successively or simultaneously; *i.e.,* the second union may have been formed after the dissolution of the first or whilst it was still in existence. It is bigamy understood in the first sense that produces a canonical irregularity or impediment to the reception of Holy Orders. (Can. 984, § 4; P. Gasparri, Tractatus Canonicus de Sacra Ordinatione, n. 373.) In modern criminal law the term bigamy is taken in the second sense and a bigamist is defined in this canon as one who, although still bound by a first marriage, attempts to contract a second one.

In order that there be bigamy punishable by law, the first marriage must have been contracted validly and not have been dissolved; and there must have been an attempt at a second marriage, not simply adulterous relations or concubinage. The second marriage can only be an attempted one as long as the first is not dissolved; the Church does not consider merely civil marriage as marriage in any sense but it is sufficient to constitute an attempt.

2°. *Penalties.* (*a*) Bigamists become *ipso facto* legally infamous. The penalty is incurred as soon as the attempt at a second marriage has been made, or the formalities for it have been complied with, before consummation.

(*b*) If, after receiving an admonition from the Ordinary, they persist in their unlawful union they should be excommunicated or placed under personal interdict according to the gravity of their guilt.

VII. VARIOUS DELINQUENCIES AGAINST MORALS

316. Moral disorders in laymen may be punished by both the civil and the ecclesiastical authority; in clerics they are strictly ecclesiastical cases and regularly only the ecclesiastical judge is competent to pronounce upon them; but in modern times the privilege of the court is often disregarded.

In this matter particularly the gravity of the offence depends on the character of the offender and his rank in the Church; hence the legislator deals in three distinct canons with three different classes of delinquents: laymen, clerics in minor Orders, and clerics in major Orders.

1°. *Laymen*

Can. 2357, § 1. Laici legitime damnati ob delicta contra sextum cum minoribus infra aetatem sexdecim annorum commissa, vel ob stuprum, sodomiam, incestum, lenocinium, ipso facto infames sunt, praeter alias poenas quas Ordinarius infligendas iudicaverit.

§ 2. Qui publicum adulterii delictum commiserint, vel in concubinatu publice vivant, vel ob alia delicta contra sextum decalogi praeceptum legitime fuerint damnati, excludantur ab actibus legitimis ecclesiasticis, donec signa verae resipiscentiae dederint.

317. (*a*) Laymen become infamous *ipso facto*, besides the other penalties which may be imposed upon them by the Ordinary, when condemnation is legitimately pronounced against them for one of the following delinquencies:

Offence against the sixth commandment committed with minors under the age of sixteen, whether the sin be against nature or not, provided it be grave, external, and complete;

Rape in the strict sense, implying violence and injustice besides impurity;

Sodomy, the unnatural sin committed with a person of the same or of different sex (Wernz, n. 396);

Incest, unlawful carnal relations with persons related by blood or by marriage within the forbidden degrees.

Lenocinium, or traffic in vice.

(*b*) They ought to be excluded from the legitimate ecclesiastical acts until they show signs of sincere repentance, if they are guilty of public adultery or concubinage; or if they have been legitimately condemned for any other delinquencies against the sixth commandment than those already mentioned and for which special penalties are provided.

When the adultery or concubinage is publicly known, the ecclesiastical judge may impose these punishments before there has been a sentence of the court. (Wernz, n. 389.)

2°. *Clerics in minor Orders*

Can. 2358. Clerici in minoribus ordinibus constituti, rei alicuius delicti contra sextum decalogi praeceptum, pro gravitate culpae puniantur etiam dimissione e statu clericali, si delicti adiuncta id suadeant, praeter poenas de quibus in can. 2357, si his locus sit.

318. Clerics in minor Orders who become guilty of any delinquency against the sixth commandment are liable to all the penalties enacted against laymen in canon 2357 if their crime comes under this law; and other punishments should be added according as the gravity of their guilt may demand. They may even be dismissed from the clerical state, if the circumstances of the delinquency be such as to render this measure necessary or advisable.

3°. *Clerics in major Orders*

Can. 2359. § 1. Clerici in sacris sive saeculares sive religiosi concubinarii, monitione inutiliter praemissa, cogantur ab illicito contubernio recedere et scandalum reparare suspensione a divinis, privatione fructuum officii, beneficii, dignitatis, servato praescripto can. 2176–2181.

§ 2. Si delictum admiserint contra sextum decalogi praeceptum cum minoribus infra aetatem sexdecim annorum, vel adulterium, stuprum, bestialitatem, sodomiam, lenocinium, incestum cum consanguineis aut affinibus in primo gradu exercuerint, suspendantur, infames declarentur, quolibet officio, beneficio, dignitate, munere, si quod habeant, priventur, et in casibus gravioribus deponantur.

§ 3. Si aliter contra sextum decalogi praeceptum deliquerint, congruis poenis secundum casus gravitatem coerceantur, non excepta officii vel beneficii privatione, maxime si curam animarum gerant.

319. Here we have three distinct kinds of delinquencies with corresponding punishments.

(*a*) Concubinage. A cleric in major Orders, religious or secular, living in concubinage should first be given a warning by the Ordinary. If this remains without effect various coercive measures are taken to compel him to cease the unlawful cohabitation and make reparation for the scandal given; he is suspended *a divinis,* deprived of office, benefice and dignity.

The manner of proceeding in these cases is described in canons 2176–2181.

(*b*) Delinquencies against the sixth commandment committed with minors under the age of sixteen, adultery, rape, bestiality, sodomy, lenocinium, incest committed with relations by blood or by marriage in the first degree, whether of the direct or collateral line.

If these crimes are certain and consummated, the following penalties, all *ferendae sententiae,* are imposed upon the offender: suspension, infamy, privation of any office, benefice, dignity or function which the offender might have; even deposition in particularly grave cases.

(*c*) Any other delinquency against the sixth commandment is visited with a punishment proportioned to the gravity of the fault. The ecclesiastical superior is authorized to go as far as depriving the culprit of his office or benefice, particularly if he has charge of souls.

Title XV

THE CRIME CALLED FALSUM, FALSEHOOD

320. The crime of falsehood, *crimen falsi,* in general, consists in the perversion or corruption of truth, done with malice, usually to the detriment of another.

It may be committed in many ways, by word as in perjury, by act as in counterfeiting coin, or by writing as in the case of forgery.

All offences against the laws of truth and justice are condemned by God and by the Church, but the ecclesiastical as well as the civil legislator enacts punishments only against the graver disorders.

Under the old Roman law, falsum was punished with confiscation of property, deportation and even death, in some extreme cases; the counterfeiting of coin or of false wills was dealt with in a particularly severe manner. (Cod. Theod., Lib. ix, tit. xix, leg. 1, 2; tit. xxi, leg. 1, 2, 3, 5, 6; Bingham, Book xvi, c. xii, sect. 14; Dictionary of Christian Antiquities, Forgery.)

In the earliest Councils of the Church we find canons against perjury (Elvira, 300, c. 73, 74, 75; Arles, 314, c. 14) and forgery. (Agde, 506, c. 50.) The coining of false money is condemned by the First Lateran Council, 1123 (c. 15), and by numerous others thereafter.

The present law is concerned here with four principal forms of the crime of falsehood or *crimen falsi.* (Wernz, n. 421 ff.; x, v, 20.)

I. FORGERY OF PONTIFICAL DOCUMENTS

Can. 2360. § **1.** Omnes fabricatores vel falsarii litterarum, decretorum vel rescriptorum Sedis Apostolicae vel iisdem litteris, decretis vel rescriptis scienter utentes incurrunt ipso facto in excommunicationem speciali modo Sedi Apostolicae reservatam.

§ **2.** Clerici delictum de quo in § 1 committentes aliis poenis prae-

C. A. S.—Excommunicationem R. P. specialiter reservatam incurrunt:

Omnes falsarii Litterarum Apostolicarum, etiam in forma Brevis ac supplicationum gratiam vel justitiam concernentium, per Romanum Pontificem, vel S. E. R. Vice-Cancellarios seu Gerentes vices eorum aut de mandato Ejusdem terea coerceantur, quae usque ad privationem beneficii, officii, dignitatis et pensionis ecclesiasticae extendi possunt; religiosi autem priventur omnibus officiis quae in religione habent et voce activa ac passiva, praeter alias poenas in propriis cuiusque constitutionibus statutas.

Romani Pontificis signatorum: nec non falso publicantes Litteras Apostolicas, etiam in forma Brevis, et etiam falso signantes supplicationes hujusmodi sub nomine R. Pontificis seu Vice-Cancellarii aut gerentis vices praedictorum.

Excommunicationem Ordinario reservatam incurrunt: Litteris Apostolicis falsis scienter utentes vel crimini ea in re cooperantes.

321. Special precautions had to be taken at a very early date against the forgeries or falsifications of ecclesiastical, particularly Pontifical, documents. The Councils of the Middle Ages often refer to such abuses. (Tribur, 895.) Their legislation was embodied in the Decretals of Gregory IX (V. 20), in part at least in the *Bulla Coenae* and the Constitution *Apostolicae Sedis;* and now, after further modification, it passes into the New Code.

1°. *Object of the present law.* In the Constitution *Apostolicae Sedis* the penalties were directed against four different forms of forgery: falsification of Apostolic letters and petitions for rescripts signed by the Pope or his immediate representatives, false publication of Apostolic letters, forgery of Papal signature to petitions for rescripts, use of these documents. The scope of the present law is, in some respects more, in others less, comprehensive than the former one. It includes:

(*a*) Forgery proper, as well as falsification of Apostolic documents. Forgers, *fabricatores,* as distinct from falsifiers, fabricate the entire document; affixing the Papal seal or signature to a document composed by another would, however, be equivalent to forging it.

(*b*) Falsification, which implies alteration, by addition, suppression, or substitution; by erasures, interlining, writing over, etc. Falsification supposes malice, *dolus malus,* and to be a grave offence must be so notable as to change the sense of the document in an important or substantial manner.

Nothing in the text of this canon implies that the intention of injuring another is required for the delinquency of either forgery or falsification; the disrespect or contempt for the Holy See shown in these acts is of itself sufficient to call for severe sanctions. Nor is it necessary that the forged or falsified documents be published or used in any way. (Cappello, n. 100.)

(*c*) Forgery and falsification of letters, decrees, and rescripts of the Holy See. The designation applies to all official documents issued by the Pope, not his private letters; or by the Roman Congregation, Tribunals and Offices (can. 7), not by particular Synods or Bishops.

(*d*) Use of such forged or falsified documents. This is a distinct delinquency committed by presenting or exhibiting as Papal documents letters, decrees or rescripts known to be forged or falsified, so that they may produce their effect. It makes no difference whether they produce it or not, as, for example, when the fraud is detected in time. (Cappello, n. 101; P. Cerato, Censurae vigentes ipso facto a Codice Juris Canonici excerptae, n. 100.)

Publication of false, or illegitimate publication of authentic, Apostolic letters does not come under the present law; nor is there any mention here of cooperation in the delinquencies.

2°. *Penalties.* (*a*) An excommunication *latae sententiae* reserved to the Holy See in a special manner is incurred by all persons guilty of one of the foregoing delinquencies; therefore by laymen, clerics, Religious and also Church dignitaries, with the usual exception of Cardinals. Formerly the excommunication incurred by those who only use forged letters or decrees was reserved to the Ordinary.

(*b*) Clerics should have additional punishments inflicted on them, the nature of which is not specified by law except that the superior is authorized to go so far as to deprive them of benefice, office, dignity and ecclesiastical pension.

(*c*) Religious should be deprived of the offices they hold in the Order, and of active and passive vote; besides the other penalties which may be imposed upon them by the Constitutions of each institute.

II. OBREPTION OR SUBREPTION IN PETITIONS FOR RESCRIPTS

Can. 2361. Si quis in precibus ad rescriptum a Sede Apostolica vel a loci Ordinario impetrandum fraude vel dolo verum reticuerit aut falsum exposuerit, potest a suo Ordinario pro culpae gravitate puniri, salvo praescripto can. 45, 1054.

322. 1°. A rescript, in canon law, is a written response from the ecclesiastical superior, Pope or Bishop, to questions proposed or petitions for favors. There are two kinds of rescripts: rescripts of grace, which proceed from the liberality of the superior and by which favors are granted; and rescripts of justice, which pertain to matters to be settled between contending parties, in legal form.

The petition or application for the rescript is called *supplica;* regularly it comprises three parts, the statement of the case, the petition proper and the reasons or causes for the request.

If false statements are made in the *supplica,* there is said to be obreption; if points which should be expressed are omitted, there is said to be subreption.

2°. The Ordinary is authorized to punish any one of his subjects guilty of deliberate and malicious obreption or subreption in a *supplica* addressed to the Holy See or to the Ordinary himself. The nature of the punishment is not specified; it should be proportioned to the gravity of the fault.

3°. Frequently rescripts obtained in answer to such *supplicae* will be invalid. (Can. 40–42.) Those which are issued *Motu Proprio* are valid in spite of subreption, provided there be not also obreption as to the only final cause alleged. (Can. 45.) However, " a dispensation from a minor impediment of marriage is not vitiated by obreption or subreption, even though the final cause alleged be false." (Can. 1054.)

III. FORGERY OF OTHER THAN APOSTOLIC DOCUMENTS

Can. 2362. Litterarum vel actorum ecclesiasticorum tam publicorum quam privatorum fabricatores vel falsarii vel huiusmodi documentis scienter utentes, pro gravitate delicti coerceantur, firmo praescripto can. 2406, § 1.

323. Those who forge or falsify letters and deeds of an ecclesiastical character or pertaining to ecclesiastical matters, whether public or private, and all who knowingly use the same forged or falsified documents, are to be penalized according to the gravity of the delinquency. Forging a baptismal certificate, testimonial or dimissorial letters for Ordination would come under this law; but it is not concerned with forgery of purely civil acts or deeds.

The penalties would be more severe if the forger or falsifier of diocesan or parochial papers were a person who, by his office, has them in his keeping. (Can. 2406.)

IV. FALSE CHARGES OF SOLICITATION AGAINST A CONFESSOR

Can. 2363. Si quis per seipsum vel per alios confessarium de sollicitationis crimine apud Superiores falso denuntiaverit, ipso facto incurrit in excommunicationem speciali modo Sedi Apostolicae reservatam, a qua nequit ullo in casu absolvi, nisi falsam denuntiationem formaliter retractaverit, et damna, si qua inde secuta sint, pro viribus reparaverit, imposita insuper gravi ac diuturna poenitentia, firmo praescripto can. 894.

324. The Code renews and completes in certain points the legislation of Pope Benedict XIV, in the Bull *Sacramentum Poenitentiae,* June 1, 1741, on solicitation in confession, the obligation of denouncing the culprits, and false denunciations. (Can. 904; 2368.) The present canon is concerned with false denunciations.

1°. *Nature of the delinquency.* The disorder which the law has here in view consists in bringing false charges of solicitation against a confessor, before ecclesiastical superiors.

(*a*) The charges must be objectively false and known to be such by the accuser, which implies on his part malice and grave fault.

(*b*) They must be brought against a confessor and in connection with a matter pertaining to his function, as the sin of solicitation, in the technical sense of the term, can be committed only by a minister of the sacrament of penance and in some relation to its administration.

(*c*) The confessor must be accused of the sin of solicitation as defined by Benedict XIV and explained by canonists and theologians, not of another abuse even if it were very similar to solicitation.

(*d*) The accusation must be presented, with the formalities of a judicial act, to the superior designated by law to receive such denunciations, that is, the Holy Office or the Ordinary of the place, even when the accused is a Religious. (Can. 904; H. O., July 20, 1890, A. S. S., xxx, p. 249.) Denunciations made to the pastor of the parish or to the dean of the district do not come under this law, unless these persons act as delegates of the Holy Office or of the Ordinary; the Vicar-General himself needs a special mandate at least from the Bishop, to receive them. (Can. 2220, § 2; can. 2368, § 1; S. U. I., Mar. 20, 1901; Cappello, n. 102; Tanquerey, de Poenitentia, n. 689.)

The accusation may be made through another; the *mandans* remains responsible for it.

325. 2°. *Penalties.* (*a*) By the law of Benedict XIV the sin of false accusation of solicitation was reserved, without censure, to the Holy See, and this was interpreted to mean reserved in a most special manner. (H. O., June 17, 1867.) By the present law the sin is also reserved in itself, independently of the censure which has been attached to it. It is the only one which is thus reserved to the Holy See on its own account by common law. (Can. 894.) Some hold that the sin is now reserved in a simple manner (Pighi, n. 36); others that it is reserved in a special manner like the censure attached to it. (Cappello, n. 103.) The Code does not distinguish degrees in the reservation of sins.

(*b*) To the reservation of the sin the present law adds an excommunication *latae sententiae* reserved to the Holy See in a special manner. Ignorance of the censure, provided it be not crass and supine, will excuse from it, but even then the sin will remain reserved.

Does ignorance of this latter reservation excuse from it also? Some theologians and canonists have answered in the affirmative, considering the reservation of the sin as a penalty, vindictive or medicinal, and applying to it the same principles as to ordinary penalties. (Lehmkuhl, ii, n. 407; D'Annibale, i, n. 340; Génicot, ii, n. 345); they find a confirmation of this view in the Instruction of Holy Office, July 13, 1916, and even in the New Code. (Can. 897–900; Cappello, n. 103; Cerato, n. 101.)

More commonly the answer is negative, at least among the ancient theologians (St. Alphonsus, vi, n. 581), and this seems to be clearly the view adopted by the Code. A reservation of sin is not a vindictive penalty in the strict canonical sense of the term; it does not depend on the will of the superior to remove it or not when the offender is repentant (can. 900, 2236, 2298); and, in any case, ignorance does not excuse from vindictive penalties. (Can. 2229, § 3.) Nor can it be called a medicinal penalty or censure. The Code identifies medicinal penalties and censures (can. 2216) and recognizes only three kinds of censures: excommunication, interdict and suspension. (Can. 2255.)

Reservation of sins is not classed among penalties; the Code treats of it, not in the fifth but in the third book in the title on the sacrament of Penance. Reservations do not hold outside of the territory of the superior who enacted them (can. 900); penalties do, even medicinal penalties. (Can. 2236, 2248.)

Nowhere is it explicitly stated that ignorance excuses from reservation, although it is declared to excuse from the sin or the penalty. A reservation is a limitation of the jurisdiction of the confessor; it affects him directly and the penitent only indirectly. (Can. 893.) Hence, it is ignorance on the part of the confessor that has to be considered, not on the part of the penitent; and in fact "if a confessor, not knowing of the reservation, would absolve from censure and sin, the absolution from the censure would be valid provided it be not one *ab homine* or one reserved to the Holy See in a most special manner." (Can. 2247, § 3.) The effect which ignorance of the reservation on the part of the culprit might have is never mentioned explicitly. (Ecclesiastical Review, Nov., 1918, p. 458 ff.; Jan., 1919, p. 61, ff.)

(*c*) Absolution from this censure is never granted except on the three following conditions: the accusation must be retracted formally, *i.e.,* in presence of the superior who can receive the denunciation or of his delegate; reparation must be made for the injury done, if there was any; for example, if in consequence of the false charge the confessor had been suspended, deprived of office or benefice, he should be compensated for the loss suffered thereby as far as possible; a grave and long penance must be imposed on the offender. A penance is considered grave when, if commanded by precept of the Church, it would be sufficient matter for a grave obligation, for example, hearing Mass, fasting. It is considered of long duration when it lasts at least six months. (Génicot, ii, n. 347.)

TITLE XVI

DELINQUENCIES COMMITTED IN THE ADMINISTRATION OR RECEPTION OF ORDERS AND OF THE OTHER SACRAMENTS

I. ADMINISTRATION OF THE SACRAMENTS TO THE UNFIT OR UNWORTHY

Can. 2364. Minister qui ausus fuerit Sacramenta administrare illis qui iure sive divino sive ecclesiastico eadem recipere prohibentur, suspendatur ab administrandis Sacramentis per tempus prudenti Ordinarii arbitrio definiendum aliisque poenis pro gravitate culpae puniatur, firmis peculiaribus poenis in aliqua huius generis delicta iure statutis.

326. A person may be forbidden to receive the sacraments of the Church either by divine or by ecclesiastical law; for example, by divine law, Extreme Unction is reserved to the sick, the sacraments of the living should not be received by those in the state of mortal sin. By ecclesiastical law persons under excommunication or personal interdict should be refused all the sacraments. A minister who dares go against these divine or ecclesiastical ordinances should be suspended from the administration of the sacraments for a period of time to be determined by the Ordinary according to the gravity of the offence; he may be punished in other ways also. There may besides be special penalties decreed against particular delinquencies, for example, in canon 2370.

The expression "*ausus fuerit*" implies that full knowledge and malice are required to incur these penalties; ignorance and light fear excuse from them.

II. ADMINISTRATION OF CONFIRMATION BY A PRIEST WITHOUT REQUIRED FACULTY

Can. 2365. Presbyter qui nec a iure nec ex Romani Pontificis concessione facultatem habens sacramentum confirmationis ministrare ausus fuerit, suspendatur; si vero facultatis sibi factae limites praetergredi praesumpserit, eadem facultate eo ipso privatus exsistat.

327. The ordinary minister of Confirmation is the Bishop alone, but a priest may be given power to administer it, either by common law or by special Apostolic Indult. (Can. 782.)

A priest who, not having received such faculty, would presume to administer Confirmation should be suspended. If he had received the faculty but went beyond its limits, for example, if he would confirm outside of the district for which he has received the authorization, he would lose *ipso facto* the power granted to him.

In both cases presumption is required, *i.e.,* full knowledge and freedom.

III. ABSOLUTION GIVEN WITHOUT NECESSARY JURISDICTION

Can. 2366. Sacerdos qui sine necessaria iurisdictione praesumpserit sacramentales confessiones audire, est ipso facto suspensus a divinis; qui vero a peccatis reservatis absolvere, ipso facto suspensus est ab audiendis confessionibus.

Two new censures are enacted by this canon:

328. 1°. Suspension *a divinis, i.e.,* from all power of Order, incurred *ipso facto* by a priest who presumes to hear sacramental confessions without the necessary jurisdiction.

(*a*) This censure affects priests only, religious or secular; not, for example, deacons, clerics, or laymen who might fraudulently hear confessions; these may and should be punished in some other manner, or even denounced to the Holy Inquisition.

(*b*) It does not matter for what reason the confessor lacks the necessary jurisdiction, either because it never was conferred upon him, or because he lost it, or because it does not extend to the territory in which he uses it, or to the persons over whom he exercises it; for example, if he would hear the confessions of Religious without the required special delegation.

In such cases the Church, when there is common error, supplies the jurisdiction, rendering the absolutions valid; but they would remain unlawful and the penalty would be the same. (Can. 209; Cerato, n. 118.)

(*c*) To incur the censure it is not necessary to give absolution; it suffices to hear the confessions provided they be sacramental, *i.e.,* made for the purpose of obtaining absolution presently or eventually.

329. 2°. Suspension from hearing confessions incurred *ipso facto* by a priest who presumes to absolve from reserved sins without the necessary jurisdiction.

(*a*) Here the suspension is more limited than in the preceding case; and to incur it absolution must be given, even though invalidly. It does not suffice to hear the confession; the form of absolution has to be pronounced with the intention of absolving, since simulation of absolution is not mentioned here as in the next canon.

(*b*) The sin from which absolution is given must be reserved, whether by common or particular law, whether to the Holy See or to the Ordinary. The law speaks of reserved sins, not of reserved censures. There are special provisions concerning absolution of reserved censures without authority. (Can. 2338.) This, therefore, applies only to sins which are reserved on their own account (Irish Theological Quarterly, Jan., 1918, p. 50), not to those reserved indirectly, *ratione censurae,* as some would hold. (Cerato, l.c., n. 118.)

Neither suspension is reserved and for both presumption is required; the confessor must know that he has not the necessary jurisdiction, not simply be in doubt about it; and know also that he is forbidden to hear the confession or absolve under pain of suspension. Crass ignorance or light fear would excuse him.

IV. ABSOLUTION OF AN ACCOMPLICE

330. It is not fitting that a confessor should remit a sin in which he has cooperated. The accusation would thereby be facilitated in a manner calculated to become an occasion of further falls. This is particularly true of sins against the sixth commandment. Hence the Church, to protect the sanctity of the sacrament of Penance and to show her condemnation of any abuses connected with its administration, forbids, under the most severe penalties, a confessor to absolve his accomplice in *peccato turpi.*

The question of the absolution of an accomplice is discussed in detail from the moral point of view by theologians in the treatise on Penance. (Tanquerey, n. 664; Berardi, De Absolutione Complicis; Dictionnaire de Théologie Catholique, Complicité.) Here its penal aspect is chiefly considered.

The first general legislation on the subject is due to Benedict XIV. (Const. *Sacramentum Poenitentiae,* June 1, 1741; *Apostolici Muneris,* Feb. 8, 1745; *Inter Praeteritos,* Dec. 3, 1749.) Pius IX renewed it in the Constitution *Apostolicae Sedis;* it was explained by canonists or theologians, officially interpreted and completed by several decrees of Congregations, particularly by those of the Holy Office, May 23, 1873, December 10, 1883, and of the Sacred Penitentiary, March 1, 1878, February 19, 1896. The present canon embodies substantially the legislation of the two Pontiffs, together with the decisions of the Congregations or Tribunals.

Can. 2367. § 1. Absolvens vel fingens absolvere complicem in peccato turpi incurrit ipso facto in excommunicationem specialissimo modo Sedi Apostolicae reservatam; idque etiam in mortis articulo, si alius sacerdos, licet non approbatus ad confessiones, sine gravi aliqua exoritura infamia et scandalo, possit excipere morientis confessionem, excepto casu quo moribundus recuset alii confiteri.

§ 2. Eandem excommunicationem non effugit absolvens vel fingens

C. A. S.—Excommunicationem A. S. speciali modo reservatam incurrunt: Absolventes complicem in peccato turpi etiam in mortis articulo, si alius Sacerdos licet non approbatus ad confessiones, sine gravi aliqua exoritura infamia et scandalo, possit excipere morientis confessionem.

S. Poenitentiaria respondit (Mar. 1, 1878): Confessarios simulantes absolutionem complicis in peccato turpi non effugere excommunicationem.

Sanctum Officium de-

absolvere complicem qui peccatum quidem complicitatis, a quo nondum est absolutus, non confitetur, sed ideo ita se gerit, quia ad id a complice confessario sive directe sive indirecte inductus est.

claravit (Feb. 19, 1896): Excommunicationem reservatam in Bulla *Sacramentum Poenitentiae,* non effugere confessarios absolventes vel fingentes absolvere eum complicem, qui peccatum quidem complicitatis, a quo nondum est absolutus, non confitetur bona aut mala fide, sed ideo ita egerit, quia ad id confessarius poenitentem induxit, sive directe sive indirecte.

331. 1°. *The object of the law and the conditions for the delinquency.* These remain the same as under the former discipline.

(*a*) There must have been complicity in *peccato turpi,* which supposes a sin against the sixth commandment, grave and external, whatever be its specific nature otherwise, committed by the free, mutual and externally manifested consent of two parties whether of different or the same sex.

(*b*) The confessor must not only hear the confession of his accomplice but also absolve or pretend to absolve him. It had been officially declared, and now it is explicitly stated in the law, that the penalty is not avoided by the use of fiction or simulation. A distinction is made sometimes by theologians between fiction and simulation, but in this matter the two terms are used in legal texts as synonymous. (S. Penit., Mar. 1, 1878; Dec. 10, 1883; H. O. Feb. 19, 1896; Pighi, n. 6.)

(*c*) The law would not apply if the sin committed by mutual consent, or the *peccatum complicitatis,* had been confessed already to another priest and directly remitted by absolution; nor if the sin was not confessed at all through forgetfulness or ignorance, in good faith or in bad faith, unless the confessor himself had suggested the omission directly or indirectly, for example, by telling the penitent that the sin is not a grave one, that there is no need of mentioning it in confession, that he could not absolve from it, that it is sufficiently known to him, etc.

(*d*) Absolution of an accomplice in danger of death is valid but not licit, and therefore comes under the law, if there is another available priest who could hear the confession, even though he may not be approved; unless it be impossible to ask or obtain his intervention in the case without serious danger of grave scandal or of diffamation of one or both of the parties; and also unless the dying person be unwilling to make his or her confession to him.

The law speaks of the point of death, which would seem to imply that the death must be almost certain, but canonists generally understand this to mean nothing more than a really serious danger. They commonly admit also that if there were no other priest available to hear the confession than one formally and publicly excommunicated or suspended, there would be no obligation of having recourse to him.

332. 2°. *Penalty.* (*a*) Absolution given to an accomplice outside of the danger of death is null, and moreover, except in the two cases just mentioned, the confessor incurs *ipso facto* an excommunication reserved to the Holy See and now formally declared to be reserved in a most special manner.

(*b*) To absolve from this excommunication very special faculties have to be obtained from the Holy See, except in cases of urgent necessity and of danger of death, as provided in canons 2252, 2254. These faculties are not included in a general delegation to absolve from Papal censures, or even from those reserved to the Holy See in a special manner. (Can. 2253, n. 3°.) They are granted very sparingly and generally with the proviso that the obligation be imposed on the culprit to abstain from ever hearing the confession of his accomplice, or even from hearing confessions at all if his offence is not the first or second one.

(*c*) Presumption is not required, as it had been formerly, to incur this censure; consequently crass ignorance would not excuse from it. But the general principle: ignorance which is not crass or supine excuses from medicinal penalties, would apply here also.

Thus the excommunication would not be incurred if absolution had been given through inculpable mistake because the penitent has not been recognized; or even if there was some negligence on the part of the confessor but not a very grave one. The same would hold, for a somewhat different reason, if the confessor had serious reasons to doubt that the penitent is his accomplice, that his case really comes under this law; or if he had never been recognized by the penitent. (Cappello, n. 47, ff.; Cerato, n. 105; Pighi, n. 6.)

V. THE CRIME OF SOLICITATION

333. 1. Origin of the Legislation. The crime of solicitation, in the technical, canonical sense of the term, consists essentially in making use of the office of confessor to draw others into sins against the sixth commandment.

The first mention of punitive measures taken against this disorder is found in the Council of Treves (1227, c. 8), which decrees that confessors guilty of solicitation in confession lose their office and shall be excommunicated. Similar enactments were published for Spain, several centuries later, by Pius IV, in the Constitution *Cum sicut,* April 16, 1561.

The legislation of Pius IV was renewed and extended to the universal Church by Gregory XV (Const. *Universi,* Aug. 30, 1622), who added the strict command for solicited persons to denounce the guilty confessor.

Benedict XIV confirmed, explained more clearly and completed on a few points the prescriptions of the Constitution *Universi,* in the celebrated Bull *Sacramentum Poenitentiae,* June 1, 1741, which remains in force to this day. Both the Constitution *Apostolicae Sedis* and the Code renew its provisions and add their sanction to them.

Can. 904. Ad normam constitutionum apostolicarum et nominatim constitutionis Benedicti XIV *Sacramentum Poenitentiae,* 1 Iun. 1741, debet poenitens sacerdotem, reum delicti sollicitationis in confessione, intra mensem denuntiare loci Ordinario, vel Sacrae Congregationi S. Officii; et confessarius debet, graviter

Const. *Universi.* Mandamus omnibus locorum ordinariis ut diligenter inquirant et procedant contra omnes sacerdotes tam *saeculares* quam *regulares* qui personas, quaecumque illae sint, ad inhonesta *inter se* sive cum aliis quomodolibet, in actu sacramentalis confessionis, sive ante, sive post immediate, seu occasione vel praetextu confessionis, etiam confessione non secuta, sive extra confessionis occa-

onerata eius conscientia, de hoc onere poenitentem monere.

Can. 2368. § 1. Qui sollicitationis crimen de quo in can. 904, commiserit, suspendatur a celebratione Missae et ab audiendis sacramentalibus confessionibus vel etiam pro delicti gravitate inhabilis ad ipsas excipiendas declaretur, privetur omnibus beneficiis, dignitatibus, voce activa et passiva, et inhabilis ad ea omnia declaretur, et in casibus gravioribus degradationi quoque subiiciatur.

§ 2. Fidelis vero, qui scienter omiserit eum, a quo sollicitatus fuerit, in-

sionem, in confessionario aut in loco quocumque ubi confessiones audiuntur, seu ad confessionem audiendam electo, simulantes ibidem confessiones audire, sollicitare vel procurare tentaverint, aut cum eis inhonestos sermones habuerint: mandantes omnibus confessariis ut suos poenitentes quos noverint fuisse, ut supra, ab aliis sollicitatos, moneant de obligatione denuntiandi sollicitantes locorum ordinariis.

C. A. S.—Excommunicationem nemini reservatam incurrunt: Negligentes sive culpabiliter omittentes denuntiare intra mensem Confessarios sive Sacerdotes a quibus sollicitati fuerint ad turpia in quibuslibet casibus expressis a Praedecess. Nostris Gregorio XV. Constit. *Universi,* 20 Augusti 1622, et Ben-

tra mensem denuntiare contra praescriptum can. 904, incurrit in excommunicationem latae sententiae nemini reservatam, non absolvendus nisi postquam obligationi satisfecerit aut se satisfacturum serio promiserit.

edicto XIV Constit. *Sacramentum Poenitentiae*, 1 Junii, 1741.

(Explanation of this legislation can be found in treatises on Penance, v.g., Tanquerey, n. 677; in the commentaries on the Constitution *Apostolicae Sedis* or in special works such as: Berardi, De Sollicitatione et Absolutione complicis, Faventiae, 1897; Ferraris, Bibliotheca Canonica, v. Confessarius, Sollicitatio; Taunton, The Law of the Church, 1906, Solicitation; Wernz, n. 468; Canoniste Contemporain, Sept., Décembre, 1895; Cappello, n. 141; Cerato, n. 67.)

334. 2. Object of the Law. 1°. *Conditions for solicitation.* The law is directed against ministers of the sacrament of Penance who take sacrilegious advantage of their office to lead souls into certain specific sins, viz., sins of lust. It has in view then an offence:

(*a*) Committed by a priest, secular or regular, and whatever may be his dignity or privileges.

(*b*) It must be committed in some connection with the ministry of confession: during the confession itself, immediately before or immediately after, on the occasion or under the pretence of confession, in the confessional outside of the occasion of confession, or in any other place generally used for hearing confessions, or in one chosen for the penitent to make his confession, whether a sacramental confession is made or not.

(*c*) The solicitation may be by words, signs or actions; by writing to be read at the time or later. The words or actions may be indifferent in themselves, as long as they manifest, under the given circumstances, the intention of inducing the other party to offend gravely against the virtue of purity.

(*d*) It is indifferent whether the solicitation was all on one side or mutual, whether it was consented to or rejected, whether it was understood then or only later on, provided it was understood sometime; whether the solicited person was puber or impuber, male or female; whether the sin was to be committed with the confessor or a third party.

335. 2°. *Duty of the solicited party.* The Church imposes upon him the obligation of denouncing the guilty confessor to the Holy Office or to the Ordinary, within a month, under pain of excommunication and of refusal of absolution. The confessor of such penitent is bound *sub gravi* to tell him of this obligation.

(*a*) In order that the obligation of making this denunciation may exist, the crime of solicitation must be certain; there must not be any serious doubt either about the facts themselves or about their coming under the law.

(*b*) The obligation exists for any person without exception who has been solicited, even if the solicitation was consented to or was mutual. The lapse of years does not excuse from it, nor the amendment of the culprit, nor the impossibility of bringing full juridical evidence.

(*c*) Reasonable fear of serious damage to oneself or family would excuse, but not the usual inconvenience inherent to the fulfilment of that duty.

(*d*) The denunciation must be made within a month from the time the obligation is known; it is made to the Holy Office or to the Ordinary of the place in which the solicited party actually lives, even when the culprit is a Religious. The Ordinary receives it personally or through a delegate specially deputed for the purpose, in presence of another ecclesiastic acting as notary, all other witnesses being excluded. The declaration should be specific as to persons, time, places and other circumstances; it should be confirmed by oath and duly signed.

(*e*) The obligation of making the denunciation is a personal one. If, however, the solicited party could not appear personally before the ecclesiastical superior, he might report the case by letter or through another person and wait for instructions. The matter may be reported also by the confessor, who should not in such cases mention any names. The Holy Office or the Ordinary may then delegate an ecclesiastic who will receive the denunciation, without any notary or witness, and transmit it to the proper authority. (H. O., Feb. 20, 1866; Jul. 20, 1890, Collectanea S. C. P. F., 1893 n. 948, 950; A. S. S. xxv, p. 451.) As the denunciation must be of a judicial character, private letters do not suffice and anonymous letters are of no value whatsoever.

336. 3. PENALTIES. 1°. *For the guilty confessor.* (*a*) After receiving the denunciation the superior inquires into the reliability of the testimony and interrogates witnesses in the manner prescribed by the Holy Office in the Instruction of August 6, 1897. (A. S. S. xxx, pp. 249–251.) Ordinarily no sentence is pronounced before there have been three denunciations.

(*b*) If the accused is proved guilty, he is to be suspended from celebrating Holy Mass and from hearing confessions; he may even have to be declared unable to exercise again the functions of confessor, because of the gravity of the offence. He is, moreover, to be deprived of all benefices, dignities, and right to vote or to be voted for, or of active and passive voice, and declared unable to acquire again these privileges. In particularly grave cases he is subject to degradation.

2°. *For the solicited party.* (*a*) He incurs excommunication *ipso facto* if, without legitimate excuse, he fails to make the prescribed judicial denunciation within a month.

(*b*) Other persons who may know of the crime of solicitation are also bound to denounce it to the proper authority, but not under pain of censure.

(*c*) The penalty is incurred after a month has elapsed from the day the party knew of his obligation, the sanction attached to it and the time allotted to him to comply with it; unless he has a legitimate excuse or has been dispensed by the proper authority from making a formal denunciation.

(*d*) Ignorance, even crass and supine, would excuse from the censure, as also all serious doubt as to the obligation.

(*e*) The excommunication, if incurred, is not reserved and any confessor may absolve from it, but only after the denunciation has been made or the party has promised seriously to make it.

VI. VIOLATION OF THE SEAL OF CONFESSION

Can. 2369. § 1. Confessarium, qui sigillum sacramentale directe violare praesumpserit, manet excommunicatio specialissimo modo Sedi Apostolicae reservata; qui vero indirecte tantum, obnoxius est poenis, de quibus in can. 2368, § 1.

§ 2. Quicunque praescriptum can. 889, § 2 temere violaverit, pro reatus gravitate plectatur salutari poena, quae potest esse etiam excommunicatio.

337. 1°. *General principles.* (*a*) By natural, divine and ecclesiastical law, all that has been learned through sacramental confession ought to be kept secret unless the penitent consents to its revelation. This is called the seal of confession or sacramental secret.

(*b*) The obligation of preserving the seal is binding primarily on the confessor but secondarily also on all who lawfully or unlawfully have come to know some of the secrets which the seal is designed to protect; *e.g.,* persons used as interpreters in confession, superiors from whom power has been obtained to absolve from a certain reserved sin, theologians who have been consulted, those who accidentally or deliberately have overheard the confession of another, etc.

(*c*) Anything known by way of sacramental confession, the revealing of which would render confession odious, comes under the seal: all sins, and their circumstances, temptations, defects, the penance imposed, etc.

(*d*) The seal may be violated directly or indirectly. It is violated directly when any matter of the seal is explicitly disclosed and the person of the penitent clearly designated, whether he is known to the hearers or not, whether they realize or not that the information conveyed to them was obtained through sacramental confession.

It is violated indirectly when the identity of the penitent is not revealed, but there is real danger that it may become known; or, in general, whenever such use is made of the knowledge of confession as to render confession odious. (Tanquerey, n. 604.)

In an Instruction sent to local Ordinaries and superiors of Religious Orders, June 9, 1915, the Holy Office strongly condemns the practice of confessors who, whilst avoiding the mention of anything by which the party concerned might be made known, do not hesitate to speak of what they have heard in confession, either in private conversations or from the pulpit. Even if the seal of confession is substantially safeguarded, it is said, this is distasteful to the faithful and calculated to destroy their confidence. Hence, a grave obligation of conscience is imposed upon Ordinaries and religious superiors to correct severely that abuse whenever it may exist, and to instruct their clergy in the ecclesiastical conferences or pastoral retreats or on other occasions, never to speak of anything pertaining to the matter of confession, in any way whatever, directly or indirectly, in public or in private, not even casually and in passing, except when they have to consult and then they must observe the cautions recommended by theologians. (Il Monitore Ecclesiastico, June, 1917, p. 200; Cerato, n. 106b.)

338. 2°. *Penalties.* (*a*) A confessor who violates the seal of confession directly incurs *ipso facto* an excommunication reserved to the Holy See in a most special manner. This is a new censure; it is enacted now, not that it is needed to correct disorders of which in reality there are so few examples in history and practically none in modern times, but the Church wished thereby solemnly to affirm again the sacredness of the sacramental secret, to proclaim her firm determination to maintain its law inviolable and thus to protest against the audacity of civil magistrates who, in some instances, have claimed the right to summon confessors before their tribunals and ask them to testify in matters pertaining to their office.

As presumption is required to incur the penalty, the sacramental secret should be revealed not only directly but with full knowledge, deliberation and malice; crass and supine ignorance and light fear would suffice to excuse.

(*b*) Confessors who violate the seal indirectly are subject to the penalties decreed in the preceding canon against those who are guilty of solicitation. The penalties are *ferendae sententiae* and in imposing them account will be taken of the guilt of the offender in each particular case. Indirect violation admits of many degrees of gravity; at times there may be nothing more than a light imprudence.

(*c*) Persons, other than confessors, who are bound by the seal of confession and violate it whether directly or indirectly, should be punished according to the gravity of their fault; they may be even excommunicated. (Cappello, n. 55.)

VII. CONSECRATION OF A BISHOP WITHOUT THE APOSTOLIC MANDATE

Can. 2370. Episcopus aliquem consecrans in Episcopum, Episcopi vel, loco Episcoporum, presbyteri assistentes, et qui consecrationem recipit sine apostolico mandato contra praescriptum can. 953, ipso iure suspensi sunt, donec Sedes Apostolica eos dispensaverit.

339. 1°. In Decretal law it was the privilege of Metropolitans to consecrate the suffragan Bishops. (C. 6, 7, x, i, 11; Gasparri, De Sacra Ordinatione, ii, 795.) It is still the rule in the Greek Church. In the Latin Church the election of Bishops having become reserved to the Roman Pontiffs, at the end of the fourteenth century, it was natural that the consecration should be reserved in the same manner. The Roman Pontifical contains a rubric forbidding to

consecrate a Bishop without having received authorization to do so from the Apostolic See.

2°. In the present Code "the episcopal consecration is reserved to the Roman Pontiff, so that no Bishop is allowed to consecrate another unless he be certain that the Pontifical Mandate has been obtained." (Can. 953.) Ordinarily in the Bull of appointment is included the permission to receive the consecration from any Bishop in communion with the Apostolic See. The consecrating prelate should be assisted by two Bishops, unless the Holy See has dispensed from this rule. (Can. 954.) Priests may be authorized to act as assistants in place of Bishops.

3°. Should a Bishop be consecrated without the Apostolic Mandate, the prelate thus consecrated, the consecrating Bishop and the Bishops or priests who assist him become *ipso facto* suspended.

The suspension is a general one and has, therefore, all the effects a suspension can have. It is a new penalty, imposed by way of vindictive, not medicinal, punishment; and it is removed by dispensation when the Pope sees fit, not by absolution as soon as the contumacy ceases.

VIII. SIMONY IN THE ADMINISTRATION OR RECEPTION OF THE SACRAMENTS

Can. 2371. Omnes, etiam episcopali dignitate aucti, qui per simoniam ad ordines scienter promoverint vel promoti fuerint aut alia Sacramenta ministraverint vel receperint, sunt suspecti de haeresi; clerici praeterea suspensionem incurrunt Sedi Apostolicae reservatam.

340. 1°. Simony is defined by theologians as a studious intention of buying or selling or exchanging for a temporal advantage something spiritual, or annexed to what is spiritual.

Even if there is no explicit contract, or if the spiritual is not given as the price of the temporal, there is still simony when one gives something temporal primarily to acquire a right to something spiritual or vice versa. But there is no simony when an offering is accepted or a fee demanded not as price for, but on occasion of certain spiritual ministrations and for the support of religion and its ministers. The amount of these contributions and the occasions on which they may be accepted, or exacted, are determined by ecclesiastical law or legitimate custom. One demanding more than the fixed amount would, according to some, be guilty of simony (Reiffenstuel Lib. v, tit. 3, n. 300), or at least of disobedience and injustice. (Gen. i, n. 287; Eccl. Rev., Spiritual ministrations as an occasion of emolument, 1908, pp. 234–245.)

2°. The present law says that "in the administration of the sacraments the minister shall not, for any cause or occasion, directly or indirectly, exact or ask for anything, except the offering fixed for the whole ecclesiastical province by the Provincial Council or in the meeting of the Bishops of the province, and approved by the Holy See." (Can. 736, 1507.)

3°. Against the violators of these rules two penalties are enacted here:

(*a*) Suspicion of heresy incurred by all, even Bishops, who are guilty of simony in the conferring or in the reception of Orders, or in the administration or reception of the other sacraments. This punishment is common to the minister and the recipient if they offend knowingly, with full deliberation.

(*b*) Suspension reserved to the Apostolic See incurred, besides the suspicion of heresy, by the offender who is a cleric; not by a Bishop or a layman. Full knowledge is required here also; the suspension is a general one and imposed by way of censure.

IX. RECEPTION OF ORDERS FROM ONE UNDER CENSURE

Can. 2372. Suspensionem a divinis, Sedi Apostolicae reservatam, ipso facto contrahunt, qui recipere ordines praesumunt ab excommunicato vel suspenso vel interdicto post sententiam declaratoriam vel condemnatoriam, aut a notorio apostata, haeretico, schismatico; qui vero bona fide a quopiam eorum sit ordinatus, exercitio careat ordinis sic recepti donec dispensetur.

C. A. S.— Suspensionem ab ordine suscepto ipso jure incurrunt, qui eumdem ordinem recipere praesumpserunt ab excommunicato vel suspenso, vel interdicto nominatim denuntiatis, aut ab haeretico vel schismatico notorio: eum vero qui bona fide a quopiam eorum est ordinatus, exercitium non habere ordinis sic suscepti, donec dispensetur, declaramus.

341. The general prohibition to have intercourse in spiritual things with persons under censure applies particularly to receiving from them the sacraments (can. 2261, 2275, 2284), and in a very special manner to receiving from them Holy Orders. This was forbidden under the former discipline and remains forbidden now under pain of suspension.

(*a*) The suspension is *a divinis* from the exercise of all power of Orders, not simply as before from the powers of the Order thus unlawfully received.

(*b*) It is incurred for receiving Orders from one who has been excommunicated, interdicted or suspended; or one who is an apostate, a heretic or a schismatic. But the censure must have been pronounced in the ecclesiastical court by condemnatory or declaratory sentence; and the apostasy, heresy or schism must be notorious, legally, or in fact.

(*c*) The ordinand must have acted with presumption, knowing the law, the sanction attached to it and the canonical standing of the ordaining prelate.

(*d*) An ordinand who had acted in good faith would not be punished, since he is not formally guilty, but he would have to abstain from the exercise of the powers of the Order he has thus received in an irregular manner until he obtains a dispensation. He has incurred a sort of irregularity *ex defectu* from which he has to be released by the ecclesiastical superior; the latter may be his own Ordinary, since there is no mention of reservation. (Gasparri, De Sacra Ordinatione, ii, n. 784.)

X. ORDINATION WITHOUT THE REQUISITE DIMISSORIAL OR TESTIMONIAL LETTERS OR WITHOUT THE CANONICAL TITLE

Can. 2373. In suspensionem per annum ab ordinum collatione Sedi Apostolicae reservatam ipso facto incurrunt:

1.° Qui contra praescriptum can. 955, alienum subditum sine Ordinarii proprii litteris dimissoriis ordinaverint;

2.° Qui subditum proprium, qui alibi tanto tempore moratus sit ut canonicum impedimentum contrahere ibi potu-

C. A. S.— Suspensionem per annum ab ordinum administratione ipso jure incurrunt Ordinantes alienum subditum etiam sub praetextu beneficii statim conferendi, aut jam collati, sed minime sufficientis, absque ejus Episcopi litteris dimissorialibus, vel etiam subditum proprium, qui alibi tanto tempore moratus sit, ut canonicum impedimentum contra-

erit, ordinaverint contra praescriptum can. 993, n. 4, 994;

3.° Qui aliquem ad ordines maiores sine titulo canonico promoverint contra praescriptum can. 974, § 1, n. 7;

4.° Qui, salvo legitimo privilegio, religiosum, ad familiam pertinentem quae sit extra territorium ipsius ordinantis, promoverint, etiam cum litteris dimissorialibus proprii Superioris, nisi legitime probatum fuerit aliquem e casibus occurrere, de quibus in can. 966.

here ibi potuerit, absque Ordinarii ejus loci litteris testimonialibus.

Suspensionem per triennium a collatione Ordinum ipso jure incurrunt aliquem Ordinantes absque titulo beneficii, vel patrimonii cum pacto ut ordinatus non petat ab ipsis alimenta.

Suspensionem per annum a collatione ordinum ipso jure incurrit, qui, excepto casu legitimi privilegii, ordinem Sacrum contulerit absque titulo beneficii vel patrimonii clerico in aliqua Congregatione viventi, in qua solemnis professio non emittitur, vel etiam religioso nondum professo.

342. 1°. The laws regarding ordinations referred to in this canon are substantially the following:

(*a*) Every cleric shall receive Orders from his own Bishop, or from another with dimissorial letters from the first, *i.e.,* with his authorization regularly given in writing.

(*b*) Candidates for Orders, including those Religious who in this matter are held to the same laws as seculars (can. 964), must present testimonial letters from every Ordinary in whose diocese they have spent a long enough time to have incurred perhaps some impediment (can. 993); such period is regularly three months for soldiers; for others it is six months after reaching the age of puberty, *i.e.,* after completing their fourteenth year. In a few exceptional cases the sworn testimony of the candidate may be accepted as sufficient proof that he is free from canonical impediments. (Can. 994.)

(*c*) No cleric should be promoted to sacred Orders without a canonical title; for seculars the canonical title is that of benefice, patrimony, or pension, and in default of these the title of "service of the Church," or the title of mission. In the United States it is usually at present the "*Titulus servitii Ecclesiae.*" For regulars the canonical title is the solemn religious profession or *titulus paupertatis;* for Religious with simple perpetual vows it is the *titulus mensae communis,* or Congregationis. For other Religious it is the same as for seculars.

(*d*) Exempt Religious cannot be lawfully ordained by a Bishop without dimissorial letters from their major superior. These letters ought to be sent to the Bishop in whose diocese the religious community is located to which the candidate belongs; unless he gives permission to send them to another, or is absent, or is not to have ordinations on the next ordination day, or is not of the same rite as the candidate. (Can. 964–965.)

2°. Violation of these rules is punished with suspension *latae sententiae* from conferring Orders, to last for a year unless a dispensation be received from the Holy See. It may be noted here that in law the terms "order," "ordain," "ordination," "sacred ordination," include also tonsure unless the contrary be plain from the context. (Can. 950.)

The suspension from conferring Orders is incurred by:

(*a*) The prelate who ordains, without dimissorial letters, a candidate who is not his subject. The promise to confer a benefice upon him would, under the present law, be without effect, and even the conferring of one would give no new right to the prelate.

(*b*) By him who ordains his own subject without the necessary testimonial letters. Strictly speaking this would not apply to the ordination of one who is not the subject of the ordaining Bishop.

(*c*) By him who promotes some one to sacred Orders without a canonical title. The law is general, *aliquem,* and applies as well to the promotion of one who is not the subject of the ordaining prelate as to the promotion of subjects. If the title existed but was insufficient, the penalty would apparently be incurred also.

(*d*) By a Bishop who ordains a Religious on the strength of dimissorial letters, which the superior should by law have addressed to the local Ordinary.

XI. RECEPTION OF ORDERS AGAINST CANONICAL RULES

Can. 2374. Qui sine litteris vel cum falsis dimissoriis litteris, vel ante canonicam aetatem, vel per saltum ad ordines malitiose accesserit, est ipso facto a recepto ordine suspensus; qui autem sine litteris testimonialibus vel detentus aliqua censura, irregularitate aliove impedimento, gravibus poenis secundum rerum adiuncta puniatur.

343. The preceding canon was concerned with the violation of canonical rules for ordination by the ordaining prelate; the present one considers the same or similar offences on the part of the ordinand. It provides for two modes of punishment, according to the importance of the rules violated:

1°. Suspension from the Orders illegitimately received to be incurred *ipso facto;*

(*a*) By those who present themselves for Orders, whether minor or major, without dimissorial letters or with letters which are not substantially genuine. Tonsure is not included here, as it confers no powers from which one could be suspended. (Many, De Sacra Ordinatione, n. 62.)

(*b*) By those who present themselves before the canonical age, *i.e.,* before completing their twenty-first year for subdeaconship, their twenty-second for deaconship, and their twenty-fourth for the priesthood. No specific age is explicitly required for tonsure or minor Orders. (Many, l.c., n. 86.)

(*c*) By those who are ordained *per saltum; i.e.,* who receive a higher Order before receiving the lower one which precedes it in the hierarchy as established by the tradition of the Church. (Many, n. 102, 106.)

In all these cases the penalty is incurred only when the candidate is conscious of the fault and acts with malice. The suspension affects the powers of the Order received unlawfully, not the others; it is not reserved, but in case of ordination *per saltum* the Order omitted should be received before the powers of the higher one may be exercised.

344. 2°. Grave penalties, of different degrees of severity, according to the circumstances of the case, are to be imposed upon those who seek ordination without testimonial letters, or whilst subject to censures, irregularities, or other canonical impediments which debar them from Orders.

In the Pontifical, at the beginning of the ordination ceremony, the Ordinary, through the archpriest, forbids those who have not the necessary dimissorial letters or who are irregular, excommunicated, suspended, or interdicted, to present themselves for Orders, under pain of excommunication.

XII. MARRIAGE CONTRACTED WITH THE IMPEDIMENT OF MIXED RELIGION

Can. 2375. Catholici qui matrimonium mixtum, etsi validum, sine Ecclesiae dispensatione inire ausi fuerint, ipso facto ab actibus legitimis ecclesiasticis et Sacramentalibus exclusi manent, donec ab Ordinario dispensationem obtinuerint.

345. Marriage contracted with an impediment of mixed religion, from which no dispensation was obtained, may be valid but it is unlawful. The Catholic party who has violated the law of the Church, supposing that he has done so knowingly and freely, is *ipso facto* excluded from the legitimate ecclesiastical acts (can. 2256, n. 2°.), and from the use of sacramentals, until a dispensation is obtained from the Ordinary.

Title XVII

DELINQUENCIES AGAINST THE SPECIAL OBLIGATIONS OF THE ECCLESIASTICAL AND RELIGIOUS STATE.

(A. Blat, De Personis, p. 703, ff.)

I. REFUSAL TO TAKE THE EXAMINATIONS PRESCRIBED FOR THE YOUNG PRIESTS

Can. 2376. Sacerdotes qui neque ab Ordinario dispensati neque legitimo impedimento detenti examen de quo in can. 130 facere renuerint, ab Ordinario congruis poenis ad illud cogantur.

346. By common law (can. 130) all secular priests, even such as might be in charge of a parish, must, for three years after completing the regular course of studies, undergo a yearly examination in the sacred sciences, according to the program and in the manner determined by the Ordinary, unless they are legitimately excused. Those who refuse to comply with this rule, although not prevented from doing so by any legitimate impediment, should be compelled to submit to it; the Ordinary is empowered to use for this purpose whatever penalties he may consider suitable.

II. PERSISTENT ABSENCE FROM ECCLESIASTICAL CONFERENCES

Can. 2377. Sacerdotes contra praescriptum can. 131, § 1 contumaces, Ordinarius pro suo prudenti arbitrio puniat; quod si fuerint religiosi confessarii curam animarum non gerentes, eos ab audiendis saecularium confessionibus suspendat.

347. 1°. The Code (can. 131) prescribes that clerical conferences be held several times a year in every episcopal city and in every deanery for the discussion of questions of Moral and Liturgy and for other exercises which the Ordinary may consider useful to promote piety and learning among the clergy. Should it be difficult for priests to gather together in a certain place, they may be asked, as a substitute, to treat the proposed questions in writing and send their work to the Ordinary, or as he directs.

Unless a dispensation has been obtained beforehand, the conferences ought to be attended by all secular priests and by all Religious who have charge of souls even though they be exempt. The Religious who have not charge of souls but receive faculties to hear confessions from the Ordinary ought also to attend the conferences, unless they hold conferences in their own houses.

2°. Attendance at the clerical conferences is to be enforced by the Ordinary. If one who is bound to attend absents himself without proper permission explicitly granted beforehand, and continues to do so after due warning, coercive measures have to be used against him. The same rule would hold in case of one obstinately neglecting to treat the assigned questions in writing or to do the work legitimately demanded of him.

(*a*) When the delinquent is a secular priest or a Religious having charge of souls the nature of the punishment is left to the discretion of the Ordinary.

(*b*) If he is a Religious holding the faculties for confessions from the Ordinary he should be suspended from hearing the confessions of seculars.

III. GRAVE NEGLECT OF RUBRICS AND CEREMONIES

Can. 2378. Clerici maiores qui in sacro ministerio ritus et caeremonias ab Ecclesia praescriptas graviter negligant et moniti sese non emendaverint, suspendantur pro diversa reatus gravitate.

348. 1°. One of the duties of Bishops is to watch that no abuses creep into the administration of the sacraments and sacramentals in which the rites prescribed by the Church should be strictly observed; nor into divine worship and religious ceremonies, which should always be carried on in conformity with liturgical rules. (Can. 336.)

2°. Penances may be imposed on any persons guilty of negligence in this matter. But when the delinquent is a cleric in major Orders who has been admonished without any effect and is guilty of grave neglect of the rites and ceremonies prescribed by the

Church in the exercise of sacred functions, the law decrees against him the penalty of suspension, which may be partial or total, for a longer or shorter time according to the gravity of the fault.

IV. DISREGARD FOR RULES ON ECCLESIASTICAL DRESS

Can. 2379. Clerici, contra praescriptum can. 136, habitum ecclesiasticum et tonsuram clericalem non gestantes, graviter moneantur; transacto inutiliter mense a monitione, quod ad clericos minores attinet, servetur praescriptum eiusdem can. 136, § 3; clerici autem maiores, salvo praescripto can. 188, n. 7, ab ordinibus receptis suspendantur, et si ad vitae genus a statu clericali alienum notorie transierint, nec, rursus moniti, resipuerint, post tres menses ab hac ultima monitione deponantur.

349. 1°. The general law of the Church is that all clerics, not simply those in Sacred Orders, wear a becoming ecclesiastical dress in conformity with legitimate local customs and diocesan regulations, and the tonsure or clerical crown, except in places where a contrary practice has prevailed. (Can. 136.) According to the Councils of Baltimore, particularly the Third Plenary Council (1884, n. 77), the ecclesiastical dress in the United States consists of the Roman collar and cassock in the house and Church; of the Roman collar and black suit outside. Tonsure is not in use in this country.

2°. Clerics who do not wear the clerical dress or tonsure where it is obligatory should be given a severe warning. If this remains fruitless and there is no amendment within a month:

(*a*) Clerics in minor Orders forfeit the ecclesiastical state, *ipso facto,* and all its privileges unless they have a legitimate excuse. (Can. 136, § 3.)

(*b*) Clerics in major Orders are presumed to resign the offices they might hold and which therefore they lose (can. 188); they should be suspended from the Orders received; if they publicly embrace a state of life which does not befit a cleric, they should be warned again, and if within three months the admonition has produced no effect they are to be deposed.

V. COMMERCIAL TRADING

Can. 2380. Clerici vel religiosi mercaturam vel negotiationem per se aut per alios exercentes contra praescriptum can. 142, congruis poenis pro gravitate culpae ab Ordinario coerceantur.

350. 1°. Clerics are forbidden to engage, personally or through others, in commercial trading or business even if it be exclusively for the benefit of others. This applies to all clerics, not exclusively to those in Sacred Orders.

Trading in the strict sense is defined as habitual buying and selling for the sake of gain, or buying commodities for the purpose of selling them at a higher price without changing their nature. Selling the produce of one's land or animals or work is not trading. But it is generally considered unlawful for clerics to buy raw material in order to have it manufactured by hired labor and sell it with profit, because this savors of commercialism even if it is not *negotiatio* properly so called.

Clerics are not forbidden to lend money at the usual rate of interest, nor to buy shares or bonds or stock in industrial or commercial enterprises provided this be done by way of investment, to get the dividends, not for the sake of speculation. Dealing in shares and stocks at the board of trade used to be a reserved sin in America and remains forbidden.

2°. Clerics or Religious who engage in the forbidden traffic, personally or through others, should be punished by the Ordinary according to the gravity of their fault.

This law is explicitly made to include Religious as well as clerics, and these are affected by it whether they have received major Orders or only tonsure, and whether they have a benefice or not. (Can. 592.)

Benedict XIV had declared already in the Constitution *Apostolicae Servitutis,* February 25, 1741, that trading by an agent was also prohibited and should be punished. (Bullarium Bened. i, n. 13; III Plen. Coun. Balt., n. 82.)

VI. VIOLATION OF THE LAW OF RESIDENCE

Can. 2381. Qui officium, beneficium, dignitatem obtinet cum onere residentiae, si illegitime absit:

1.° Eo ipso privatur omnibus fructibus sui beneficii vel officii pro rata illegitimae absentiae, eosque tradere debet Ordinario, qui ecclesiae vel alicui pio loco vel pauperibus distribuat;

2.° Officio, beneficio, dignitate privetur, ad normam can. 2168–2175.

351. 1°. The law of residence is binding on Roman Cardinals (can. 238), on Bishops (can. 338), Vicars and Prefects Apostolic (can. 301), Canons and Beneficiaries (can. 418–419), pastors (can. 465), their coadjutors and substitutes (can. 471–475), and curates. (Can. 476.)

Pastors are obliged to reside in their parish and as far as possible near the parish church. They may take a two months' vacation every year, either continuous or interrupted, unless for some grave reason the Ordinary lengthens or shortens the time. Whenever they are to be absent for more than a full week they must obtain a written permission from the Ordinary.

Curates, or *Vicarii cooperatores* as distinct from the *Vicarii administratores, oeconomi, substituti, adjutores* (can. 471–475), are bound also to reside in the parish, the meaning and extent of their obligation to be determined in accordance with diocesan statutes, legitimate customs and episcopal ordinances. (Can. 476, § 5.)

2°. The penalties enacted in the present canon concern only ecclesiastics who hold a benefice, office, or dignity requiring residence, *e.g.,* Bishops, pastors, etc. If they violate the law:

(*a*) They lose *ipso facto* all right to that portion of the fruits of their benefice or office which corresponds to the period of their illegitimate absence. The fruits ought to be handed to the Ordinary who will dispose of them in favor of the church, pious institutions or the poor. (Con. Trid. Sess. xxiii, de Ref., c. 1.)

(*b*) They are to be deprived of their office, benefice or dignity if, after being warned, they do not come back within the time appointed, or give a valid excuse for their absence. The manner of proceeding in such cases and the formalities to be observed before pronouncing the sentence of deposition are set forth in the fourth book of the Code. (Trials, tit. xxx; can. 2168–2175.)

VII. NEGLECT OF PAROCHIAL DUTIES

Can. 2382. Si parochus graviter neglexerit Sacramentorum administrationem, infirmorum assisten-

tiam, puerorum populique institutionem, concionem diebus dominicis ceterisque festis, custodiam ecclesiae paroecialis, sanctissimae Eucharistiae, sacrorum oleorum, ab Ordinario coerceatur ad normam can. 2182–2185.

352. 1°. The principal duties of a parish priest are:

(*a*) To administer the sacraments. "The pastor ought to administer the sacraments to the faithful as often as they legitimately ask for them." (Can. 467, § 1.)

(*b*) To assist the sick. "The pastor shall take particular care of the sick, especially when they are at the point of death, with great zeal and charity giving them the sacraments and commending their souls to God." (Can. 468, § 1.)

(*c*) To give catechetical instruction to children and grown people. "It is the proper and most serious duty of pastors to attend to the catechetical instruction of the Christian people (can. 1329); the pastor ought at stated times each year to prepare the children for the reception of the sacraments of Penance and Confirmation, by a series of instructions on several days in succession; he must take special care, preferably during Lent if possible, to prepare children for a worthy First Communion; nor should he neglect their instruction after they have made their first Communion; on Sundays and other feastdays of obligation the pastor must, at an hour which is most convenient for the majority of his people, explain the catechism to the adults in the form best suited to their capacity." (Can. 1330–1332.)

(*d*) To preach the word of God to the people in the customary homily, on Sundays and holydays of obligation, especially at the Mass which usually has the largest attendance. (Can. 1344.)

(*e*) To see that such cleanliness is observed in church as is becoming to the house of God, that business transactions and fairs, even if held for a pious purpose, be kept away from it, as also anything which is not in accordance with the sanctity of the place. (Can. 1178.)

(*f*) To keep the Blessed Sacrament in his church in the manner and according to the rules laid down in canons 1265–1272.

(*g*) To keep the holy oils in the church in a safe and becoming place, under lock and key, not in the house except in cases of necessity, or for some reasonable cause with the permission of the Ordinary (can. 735); the *Oleum Infirmorum* is to be kept in a neat and ornamented place, in a receptacle of silver or white metal. (Can. 789.)

353. 2°. A pastor who is guilty of grave neglect of these duties should be reminded by the Ordinary of his obligations and of the punishments to which he exposes himself. If this has no effect the Bishop should reprimand him and impose upon him some penalty according to the gravity of his fault; should all this remain also without result, a pastor, who is not irremovable, may be deprived at once of his parish, and one who is irremovable should be deprived of the fruits of his benefice totally or partially, according to the gravity of his offence. Should he continue obstinate he may be removed. The formalities to be observed in inflicting this punishment are defined in canons 2182–2185. It may be noted that in these canons there is no reference to neglect of the duties mentioned above under (*f*) and (*g*). (Can. 2182.)

VIII. CARELESSNESS IN KEEPING THE PAROCHIAL BOOKS

Can. 2383. Parochus qui paroeciales libros diligenter, ad normam iuris, non conscripserit aut servaverit, a proprio Ordinario pro gravitate culpae puniatur.

354. 1°. The parish books to which this canon refers are: the book of baptisms, of confirmations, of marriages and of deaths; to which should be added the census book containing as complete a description of the parish as possible. This is the *liber de statu animarum.* (Can. 470.)

(*a*) The pastors are commanded, carefully and without delay, to enter into the baptismal book the name of the baptized parties, of the minister, of the parents and sponsors; the date and place of baptism. (Can. 776–778.)

In the same record must be inserted afterward a notice about the confirmation of the party, the marriage, the annulment of the marriage, the ordination to subdeaconship (can. 1011), or the solemn religious profession of the same party (can. 576), according to the case. (Can. 470.)

(*b*) In the confirmation book must be entered the names of the minister, of the confirmed, the parents and sponsors, and the date and place, besides making a note of it in the baptismal record as prescribed by canon 470.

(*c*) After the celebration of each marriage the parish priest, or he who holds his place, must register as soon as possible in the book of marriages the names of the couple and of the witnesses, the place and day of the celebration of the marriage; the fact is to be noted also in the book of baptisms (can. 1103); marriages of conscience are to be recorded in a special book kept in the secret archives of the diocese. (Can. 1107.) When a marriage is declared null by the ecclesiastical court, mention of the decision is to be made in the book of baptisms and marriages where the marriage had been entered. (Can. 1988.)

(*d*) In the book of the deceased, after each funeral, the minister must mark down the name and age of the person, the names of the parents or spouse, the date of death, the name of the priest who administered the last sacraments, with indication of the sacraments administered, the time and place of burial. (Can. 1238.)

355. 2°. All these books ought to be kept in the form, and contain all the information required by the law of the Church, diocesan regulations and approved customs. They should be preserved carefully in the archives of the parish and care taken that they do not get into strange hands. The Ordinary or his delegate inspects them from time to time particularly on the occasion of the diocesan visitation. (Can. 470.)

3°. The penalty for violating these regulations is left for the Ordinary to determine in each case according to the gravity of the fault. The Congregation of the Sacraments declared in answer to a consultation that canonical penalties could be used against pastors neglecting the double registration of marriages prescribed by the Decree *Ne temere.* (Mar. 11, 1911.)

IX. NEGLECT OF THE DUTIES OF CANON THEOLOGIAN AND PENITENTIARY

Can. 2384. Canonicum theologum et poenitentiarium in suis muneribus obeundis negligentes, Episcopus gradatim compellat monitionibus, comminatione poenarum, subtractione portionis fructuum iis

assignandae qui illorum vices suppleant; et perdurante per integrum annum negligentia post monitionem, suspensione a beneficio plectat; negligentia vero producta per aliud semestre, ipso beneficio privet.

356. 1°. By common law, in every cathedral church there should be a canon theologian and, wherever possible, a canon penitentiary also. (Can. 398.)

The office of the canon theologian is to explain the sacred Scriptures publicly, in church, on the days and at the hours determined by the Bishop with the advice of the chapter. The Bishop may also, if he deems this more useful, entrust him with the exposition of some other portion of the Catholic doctrine; or he may, for grave reasons, appoint him to teach theology in the seminary instead of giving public lectures in church. (Can. 400.)

The canon penitentiary enjoys ordinary power of absolving, even strangers, from sins and censures reserved to the Bishop.

He must be in the confessional assigned to him in the capitular church at the time which, in the estimation of the Bishop, is the most convenient for the faithful, and he must be ready to hear confessions even during the divine services. (Can. 401.)

2°. If the canon theologian and the canon penitentiary are negligent in the discharge of their duties, the Bishop should, by means of admonitions, threats of penalties, subtraction from their income of the compensation for their substitutes, bring them to comply with their obligations; should the negligence continue for a year after the admonition has been given, they should be suspended from their benefice; and if the negligence remains the same for six months more, they ought to be deprived of the benefice itself.

X. APOSTASY FROM RELIGION

Can. 2385. Firmo praescripto can. 646, religiosus, apostata a religione, ipso iure incurrit in excommunicationem, proprio Superiori maiori vel, si religio sit laicalis aut non exempta, Ordinario loci in quo commoratur, reservatam, ab actibus legitimis ecclesiasticis est exclusus, privilegiis omnibus suae religionis privatus; et si redierit, perpetuo caret voce activa et passiva, ac praeterea aliis poenis pro gravitate culpae a Superioribus puniri debet ad normam constitutionum.

357. 1°. An apostate from religion is a Religious who, having made perpetual vows whether solemn or simple, unlawfully goes out of the religious house with the intention of not returning; or one who, having left the house lawfully, does not return in due time, in order thereby to withdraw himself from religious obedience. This is presumed to be his intention if he has not returned within a month or at least manifested to the superior his intention of returning. (Can. 644; Wernz, n. 273; Piatus Montensis, Praelectiones Juris Regularis, vol. i, n. 215.) The law now certainly applies to Religious with simple vows, provided they be perpetual and to members of Congregations as well as to Religious with solemn vows and to members of Orders, strictly so called. It applies also to women, for "whatever is enacted about Religious binds also religious women, even though the masculine gender is employed, unless the contrary be evident from the context or the nature of the law." (Can. 490.)

358. 2°. Ancient Councils repeatedly reprove the conduct of monks who, after consecrating themselves to God, left their monastery and wandered about or returned to the secular life. The Council of Arles

(443 or 452, c. 25) excludes them from communion and from Holy Orders. The Council of Chalcedon (452, c. 7) threatens them with anathema; and a Council of Paris (614, c. 14) decrees against them excommunication. Particularly severe penalties are enacted against those who renounce the life of continence to enter the marriage state. Legislation against this abuse becomes specially frequent after the seventh century.

Boniface VIII, in the Council of Rome (1298), pronounced against regulars who discarded the religious garb and left their convent an excommunication *latae sententiae,* which, according to the common opinion, had remained in force even after the publication of the Constitution *Apostolicae Sedis.* Those who left the monastery without putting off the religious habit could be excommunicated by their superiors but this penalty was *ferendae sententiae.* (Wernz, n. 276; Piatus Montensis, l.c., n. 219.)

359. 3°. Under the present law any Religious who goes away with a person of the opposite sex, whether with or without the intention of marriage, is by the very fact to be considered as lawfully dismissed (can. 646); and, moreover, any apostate from religion in the sense defined above:

(*a*) Incurs an excommunication *latae sententiae* reserved to his higher superiors, the Provincial, or Superior General, if he belongs to a clerical institute enjoying the privilege of exemption; to the Ordinary of the place in which he actually resides, if he is a member of a lay organization, or one which is not exempt.

A clerical institute is a religious organization, most of whose members are priests. When most of the members are laymen the organization is called *religio laicalis.* (Can. 488, n. 4°.) Exemption implies withdrawal from the jurisdiction of the Ordinary of the place. This privilege belongs regularly to Orders with solemn vows but it is granted also to Congregations in which only simple vows are taken.

A secular confessor can absolve Religious from the sins and censures reserved in the Order, but the excommunication enacted in this canon is one of the common law and does not come under this provision. (Can. 519.)

(*b*) The apostate is excluded, *ipso jure,* from the legitimate ecclesiastical acts, and from all the privileges of the Order.

(*c*) Should he return he is deprived permanently of active and passive vote, *i.e.,* the right to vote and to be voted for; his superiors may, besides, impose upon him other penalties in accordance with the gravity of his fault or the prescriptions of the Constitutions.

XI. FLIGHT FROM RELIGION

Can. 2386. Religiosus fugitivus ipso facto incurrit in privationem officii, si quod in religione habeat, et in suspensionem proprio Superiori maiori reservatam, si sit in sacris; cum autem redierit, puniatur secundum constitutiones, et si constitutiones nihil de hoc caveant, Superior maior pro gravitate culpae poenas infligat.

360. 1°. A fugitive Religious is one who, without his superior's permission, leaves the monastery or convent but with the intention of returning. (Can. 645.) The fugitive differs from the apostate in that he has the intention of coming back to the institute. Canonists generally require, although this is not mentioned here by the law, that the purpose of the withdrawal be to cast off temporarily the burden of religious obedience. One who would absent himself only for a short time and without neglecting any important duty would not be *fugitivus* but rather *furtivé exiens.* How long should the absence endure in order to constitute a *fuga* may depend on the strictness of the rule or the prescriptions of particular Constitutions on the subject.

2°. Under the former discipline there were no general penalties enacted by common law against fugitives. In some Orders they were punished even with excommunication, but this was particular legislation.

By the present canon, fugitives (*a*) *ipso facto* incur the loss of any office they may hold in the Order, and, if they are in Sacred Orders, suspension reserved to their superior; (*b*) when they return they are to be punished as the Constitutions direct. If there is no provision for such cases in the Constitutions the higher superior must impose a penalty proportioned to the fault.

XII. FRAUD INVALIDATING RELIGIOUS PROFESSION

Can. 2387. Religiosus clericus cuius professio ob admissum ab ipso dolum nulla fuerit declarata, si sit in minoribus ordinibus constitutus, e statu clericali abiiciatur; si in maioribus, ipso facto suspensus manet, donec Sedi Apostolicae aliter visum fuerit.

361. A professed Religious is ordained with dimissorial letters from his superiors if he is exempt (can. 964, n. 2°., 3°., 4°.); and in any case he is ordained for the Congregation or Order, not for the needs of any particular diocese. But the canonical claims of the Order on him and his on the Order are all based on the fact of his profession; if this proves invalid he becomes legally or practically a vagrant cleric, a condition condemned by law. (Can. 111.) Were the nullity of the profession due to no fault of his own, this uncanonical condition would be remedied in some other way; but when it is due to his wilful deceit he is punished with dismissal from the clerical state if he is in minor Orders, and if he has already received Sacred Orders he remains suspended until the Holy See decides to dispense him.

(*a*) The law is formulated in very general terms, and should consequently apply whether the religious profession is solemn or simple, perpetual or temporary; whether made in an Order or Congregation, in a Pontifical or diocesan institute, exempt or under episcopal jurisdiction.

(*b*) To incur the penalties the cleric must be personally guilty of the deceit which caused the nullity of the profession; they are incurred only when the profession is actually declared invalid.

(*c*) Dismissal from the clerical state is *ferendae sententiae;* the suspension is *latae sententiae.* It is imposed by way of vindictive punishment and is removed by dispensation at the good pleasure of the Holy See.

XIII. SACRILEGIOUS MARRIAGES

Can. 2388. § 1. Clerici in sacris constituti vel regulares aut moniales post votum sollemne castitatis, itemque omnes cum aliqua ex praedictis personis matrimonium etiam civiliter tantum contrahere praesumentes, incurrunt in excom-

C. A. S.— Excommunicatio Ordinario reservata viget contra: Clericos in Sacris constitutos vel Regulares aut Moniales post votum solemne castitatis matrimonium contrahere prae-

municationem latae sententiae Sedi Apostolicae simpliciter reservatam; clerici praeterea, si moniti, tempore ab Ordinario pro adiunctorum diversitate praefinito, non resipuerint, degradentur, firmo praescripto can. 188, n. 5.

§ 2. Quod si sint professi votorum simplicium perpetuorum tam in Ordinibus quam in Congregationibus religiosis, omnes, ut supra, excommunicatio tenet latae sententiae Ordinario reservata.

sumentes, nec non omnes cum aliqua ex praedictis personis contrahere praesumentes.

362. Reference has been made already to penalties enacted by Councils, particularly since the eighth century, against Religious who violated their vows and contracted marriage. The ancient legislation was concerned exclusively with regulars. Even the excommunication renewed in the Constitution *Apostolicae Sedis* affects only clerics in Sacred Orders and Religious with solemn vows. The present canon contains also a provision for members of Congregations.

I. Clerics in Sacred Orders and Religious with solemn vows contracting marriage:

1°. They and persons contracting with them incur *ipso facto* an excommunication reserved to the Holy See in a simple manner.

(*a*) The marriage in this case cannot be valid since there is at least the diriment impediment of vow or Sacred Orders; but it must be attempted, some formality must be observed manifesting the intention of forming a contract. Concubinage does not come under this law. A merely civil ceremony, however, will suffice; this had been declared by the Holy Office (Dec. 22, 1880) and is explicitly stated in the present canon. The presence of other diriment impediments, such as consanguinity or affinity, would not prevent the contract from being considered as an attempted marriage (Holy Office, Jan. 22, 1892); but according to some it would cease to have that character if it was null for want of consent (Lehmkuhl, n. 969; Cappello, n. 121; Pighi, n. 11), although others deny it. (Cerato, n. 86.) The want or simulation of consent would have to be proved conclusively; but if it was certain and public, the union thus entered into would seem to differ little from concubinage, by which the censure is not incurred.

(*b*) As presumption is required, even crass ignorance of the facts, the law or its sanction, and also light fear would excuse from the penalties. If one of the parties contracts marriage in good faith and afterward discovers his error he incurs the censure, according to some, when he consents to continue in the sacrilegious union (Cerato, n. 86); according to others he commits a sin, but the penalties are incurred only at the moment the contract is made and the required conditions fulfilled. (Cappello, n. 121.)

363. 2°. By the mere fact that a cleric contracts marriage all the offices he holds become vacant; moreover, if he does not, after due warning and within the time fixed according to circumstances by the Ordinary, show any signs of repentance, he is to be degraded.

II. Religious with simple but perpetual vows who contract marriage and those who contract with them incur an excommunication *latae sententiae* reserved to the Ordinary.

(*a*) It is indifferent whether these Religious are members of an Order or of a simple Congregation, provided they have perpetual vows.

(*b*) As in the previous case, the marriage may be null for various causes, provided it retains some appearance of marriage and is not a mere concubinage; it must be contracted with full knowledge and perfect freedom.

(*c*) This excommunication is reserved to the Ordinary — which means the Ordinary of the place for lay offenders or Religious who are not exempt, and for the others their major superiors.

XIV. DEPARTURE FROM RULES OF COMMUNITY LIFE

Can. 2389. Religiosi legem vitae communis constitutionibus praescriptae in re notabili violantes, graviter moneantur et, emendatione non secuta, puniantur etiam privatione vocis activae et passivae et, si Superiores sint, etiam officii.

364. 1°. The religious state is defined in the Code, "a permanent mode of common life in which the faithful, besides observing the commandments, bind themselves to the practice of the evangelical counsels by the vows of obedience, chastity, and poverty." (Can. 487.)

Life in common is not a necessary condition for perfection and it may not in itself pertain to the substance of the religious life (Piatus Montensis, l.c., vol. i, n. 15; Wernz, vol. iii, n. 590); the ancient hermits are sometimes called Religious. But at least by ecclesiastical law, in the present discipline of the Church, some degree of community life is an essential element of the religious life, in the canonical sense of the term.

Innocent II, in the Council of Rome, the second of Lateran, 1139 (c. 26), severely condemns the practice of supposed nuns who resided in private dwellings and there entertained their friends, instead of leading a common life as prescribed by rules; this is an abuse, he says, that cannot be tolerated; and by common life he means common chapel, common refectory and common dormitory. (C. 25, C. xviii, q. 2.)

The present Code lays particular stress on this point: "In every religious institute, the community life must be followed by all, even in what pertains to food, clothes and furniture." (Can. 594.)

2°. Community life is stricter in some Orders or Congregations than in others; each Religious should conform to the rule of his institute. If he departs from it in a grave manner he is to be admonished, and if he does not amend he is to be punished even by privation of active and passive vote and of office in the case of a superior.

TITLE XVIII

DELINQUENCIES COMMITTED IN THE CONFERRING, RECEPTION, AND DISMISSAL OF ECCLESIASTICAL DIGNITIES, OFFICES, AND BENEFICES.

I. INTERFERENCE WITH FREEDOM OF CANONICAL ELECTIONS

Can. 2390. § 1. Libertatem electionum ecclesiasticarum quovis modo per se vel per alios impedi-

entes, vel electores aut electum, peracta canonica electione, propter eam quoquo modo gravantes, pro modo culpae puniantur.

§ 2. Quod si electioni a collegio clericorum vel religiosorum peragendae, laici vel saecularis potestas sese illegitime, contra libertatem canonicam, immiscere praesumpserint, electores qui hanc immixtionem sollicitaverint vel sponte admiserint, ipso facto privati sunt pro ea vice iur eligendi; qui vero suae electioni taliter factae scienter consenserit, fit ad officium vel beneficium, de quo agitur, ipso facto inhabilis.

365. Two classes of offenders are dealt with in this canon: those who unduly interfere with the freedom of canonical elections, and those who invite, willingly accept, or consent to illegitimate interference.

1°. The freedom of ecclesiastical elections may be impeded in various ways: by exercising undue pressure on the electors, whether one does so personally or through others, before the election; after the election by molesting, on account of it, the electors or the candidate chosen by them, in whatever manner. All such abuses are to be punished according to the gravity of the offence.

2°. When lay persons or the secular power, in defiance of the canonical law, presume to interfere in an election which is reserved to a clerical or religious college, if this interference has been invited or willingly admitted by the legitimate electors, these are deprived, *ipso facto,* of the right of election for that time; the candidate knowingly accepting such election becomes legally disqualified for the office or benefice in question.

II. ELECTION, PRESENTATION, NOMINATION OF UNWORTHY CANDIDATES; IRREGULARITIES IN ELECTIONS

Can. 2391. § 1. Collegium quod indignum scienter elegerit, ipso facto privatur pro ea vice iure ad novam electionem procedendi.

§ 2. Singuli vero electores qui substantialem electionis formam scienter non servaverint, possunt pro gravitate culpae ab Ordinario puniri.

§ 3. Clerici vel laici qui indignum scienter praesentaverint vel nominaverint, iure praesentandi vel nominandi ipso facto pro ea vice carent.

366. 1°. There is an obligation in conscience to present for, or elect to, ecclesiastical offices only the worthiest candidates (Trid., Sess. xxiv, de Ref., c. 1; Lehmkuhl, i, n. 972); but the law punishes only the presentation or election of the unworthy. If a collegiate body knowingly elect an unworthy candidate, the election is null and the college loses, *ipso facto,* for that time, the right to proceed to a new one.

2°. Certain formalities are prescribed by law to be observed in the various elections; some of them are substantial and necessary for the validity, others merely accidental. Individual electors who knowingly fail to observe the substantial form of election may be punished by the Ordinary according to the gravity of the fault.

3°. Clerics or laymen who knowingly present or nominate an unworthy person lose, *ipso facto,* for that time the right of presentation or nomination.

III. SIMONY IN CONNECTION WITH ECCLESIASTICAL OFFICES, BENEFICES, OR DIGNITIES

Can. 2392. Firmo praescripto can. 729, delictum perpetrantes simoniae in quibuslibet officiis, beneficiis aut dignitatibus ecclesiasticis:

1.° Incurrunt in excommunicationem latae sententiae Sedi Apostolicae simpliciter reservatam;

2.° Ipso facto privati in perpetuum manent iure eligendi, praesentandi, nominandi, si quod habeant;

3.° Si clerici sint, praeterea suspendantur.

C. A. S.—Excommunicatio R. P. simpliciter reservata viget contra:

Reos simoniae realis in beneficiis quibuscunque, eorumque complices.

Reos simoniae confidentialis in beneficiis quibuslibet, cujuscunque sint dignitatis.

Reos simoniae realis ob ingressum in Religionem.

367. 1°. *Nature and species.* (*a*) The "deliberate intention of buying or selling for a temporal price such things as are spiritual or annexed thereto" is condemned by divine law. The Church forbids, besides, certain transactions which, although not really implying an exchange of spiritual for temporal things and therefore not simoniacal in themselves, might, however, lead to simony and to irreverence for sacred things. Thus it is not permitted to sell blessed rosaries or crucifixes, holy oils, etc.; this would be simony of ecclesiastical law.

(*b*) Simony is merely mental when the perverse intention has not been outwardly manifested; it is called conventional when an expressed or tacit agreement has been entered upon; it becomes real when the terms of the agreement are fulfilled. The special transaction by which an ecclesiastical benefice is procured for a certain person with the implicit or explicit understanding that in due time he will either resign it in favor of the party who procured it or divide with him the revenues, has been given the name of confidential simony.

368. 2°. *Object of the law.* (*a*) Simony may be committed in connection with the administration of the sacraments, the concession of dispensations, admission into Religious Orders, etc.; the present canon is concerned with simony committed in the conferring or acquisition of ecclesiastical offices, benefices, or dignities.

(*b*) No distinction is made here between real and merely conventional or confidential simony and, therefore, both must be included. The former legislation was commonly understood to apply only to simony of divine right; nothing calls for a severer interpretation of the present one.

(*c*) Accomplices are not mentioned any longer.

3°. Penalties. Simony renders null and void the conferring of any ecclesiastical office, benefice, or dignity (can. 729); and, moreover,

(*a*) The perpetrators of the offence incur an excommunication *latae sententiae* reserved to the Holy See in a simple manner.

(*b*) They lose, *ipso facto* and forever, any right of election, presentation or nomination they may possess.

(*c*) If they are clerics they should be suspended.

IV. CONFERMENT OF OFFICE, BENEFICE, OR DIGNITY BY ONE WHO HAS ONLY THE RIGHT OF ELECTION, PRESENTATION, OR NOMINATION

Can. 2393. Omnes qui iure eligendi, praesentandi, vel nominandi legitime fruuntur, si, neglecta aucto-

ritate illius cui confirmatio vel institutio competit, officium, beneficium aut dignitatem ecclesiasticam conferre praesumpserint, suo iure pro ea vice ipso facto privati manent.

369. Any one, who, having only the right of electing, presenting, or nominating to an office, benefice, or ecclesiastical dignity, presumes to confer the same without waiting for the requisite confirmation or investiture by the legitimate superior, loses, *ipso facto,* his right for that time.

V. TAKING POSSESSION OF OFFICE, BENEFICE, OR ECCLESIASTICAL DIGNITY BEFORE RECEIVING CONFIRMATION OR INVESTITURE

Can. 2394. Qui beneficium, officium vel dignitatem ecclesiasticam propria auctoritate occupaverit vel, ad ea electus, praesentatus, nominatus in eorundem possessionem vel regimen seu administrationem sese ingesserit, antequam necessarias litteras confirmationis vel institutionis acceperit easque illis ostenderit, quibus de iure debet:

1.° Sit ipso iure ad eadem inhabilis et praeterea ab Ordinario pro gravitate culpae puniatur;

2.° Per suspensionem, privationem beneficii, officii, dignitatis antea obtentae et, si res ferat, etiam per depositionem, cogatur a beneficii, officii, dignitatis occupatione eorumque regimine vel administratione statim, monitione praemissa, recedere;

3.° Capitula vero, conventus aliique omnes ad quos spectat, huiusmodi electos, praesentatos vel nominatos ante litterarum exhibitionem admittentes, ipso facto a iure eligendi, nominandi vel praesentandi suspensi maneant ad beneplacitum Sedis Apostolicae.

370. No one should, of his own authority, take possession of an office, benefice, or ecclesiastical dignity; those who have been elected, nominated, or presented to the same should not assume possession, government, or administration before they have received the necessary letters of confirmation or investiture and shown them to such persons as prescribed by law; otherwise,

(*a*) They become, by the very fact, incapable of acquiring the office, benefice, or dignity in question and they may, besides, be punished by the Ordinary according to the gravity of the fault.

(*b*) They should be compelled to give up possession, government, or administration of the office, benefice, or ecclesiastical dignity, without any delay; and, for that, they may, after receiving warning, be suspended, deprived of any office, benefice, or dignity previously obtained, and even deposed if necessary.

(*c*) The chapters, communities or any other persons who officially admit them before they have presented the letters of confirmation or investiture, are, *ipso facto,* suspended from the right of election, presentation, or nomination, *ad beneplacitum Sedis Apostolicae.*

VI. ACCEPTING AN OFFICE OR BENEFICE WHICH IS NOT VACANT

Can. 2395. Qui scienter acceptat collationem officii, beneficii vel dignitatis de iure non vacantis et patiatur se in eius possessionem immitti, sit ipso facto inhabilis ad illa postea assequenda aliisque poenis pro modo culpae puniatur.

371. An office may be vacant *de facto* only, *de jure* only, or both *de facto* and *de jure.* It is vacant only *de facto* when no one actually holds it although some one has a right to it, *e.g.,* a parish from which the legitimate pastor has been unlawfully expelled. It is vacant *de jure* but not *de facto* when it is not legally filled, but happens to be in the possession of an intruder. The first condition for the valid conferment of an office is that it be legally vacant. (Can. 150, 151.)

Any person who knowingly accepts the appointment to an office, benefice or ecclesiastical dignity which is not vacant at least *de jure* if not *de facto,* and allows himself to be put in possession of the same, becomes *ipso facto* incapable of obtaining the office, benefice, or dignity in question, should it become vacant afterward, and he should, besides, be otherwise punished according to the gravity of the case.

VII. RETENTION OF TWO INCOMPATIBLE OFFICES OR BENEFICES

Can. 2396. Clericus, qui assecutus pacificam possessionem officii vel beneficii cum priore incompatibilis, prius quoque retinere praesumpserit contra praescriptum can. 156, 1439, utroque privatus ipso iure exsistat.

372. Two benefices are considered as incompatible by law when the obligations attached to them cannot be discharged by the same person and also when each one of them is sufficient for the decent support of the incumbent. (Can. 1439.) Offices are incompatible when they cannot be fulfilled by the same person. It is strictly forbidden to confer incompatible offices or benefices on the same subject.

When a cleric is appointed to, and obtains peaceful possession of, an office or benefice which is incompatible with one he already holds he must give up the latter; if he presumes to retain possession of both against the prescriptions of canons 156 and 1439, he is, by the very fact, deprived of both. As presumption is required it must be clear that the offices are incompatible and peaceful possession of the second one must certainly be obtained.

VIII. REFUSAL OF THE OATH DEMANDED OF CARDINALS

Can. 2397. Si quis ad dignitatem cardinalitiam promotus, iusiurandum, de quo in can. 234, emittere recusaverit, ipso facto cardinalitia dignitate privatus perpetuo maneat.

373. When prelates elevated to the cardinalate are absent from Rome the red biretta is sent to them, and on receiving it they must promise under oath to pay a visit to the Roman Pontiff within a year. Should one refuse to make this promise he would, *ipso facto,* be permanently deprived of the cardinalitial dignity.

IX. DELAY IN RECEIVING EPISCOPAL CONSECRATION

Can. 2398. Si quis ad episcopatum promotus, contra praescriptum can. 333 intra tres menses consecrationem suscipere neglexerit, fructus non facit suos, fabricae ecclesiae cathedralis applicandos; et si postea in eadem negligentia per totidem menses persistiterit, episcopatu privatus ipso iure manet.

374. Unless prevented by a legitimate obstacle, one promoted to the episcopate should be consecrated within three months from the receipt of the Apostolic letters. (Can. 333.) If he fails to comply with this obligation he does not acquire any right to the revenues of the episcopal see which go to the cathedral church. Should he delay his consecration without legitimate excuse for three months longer, he would, *ipso facto,* be deprived of the bishopric.

X. DERELICTION OF OFFICE

Can. 2399. Clerici maiores, munus a proprio Ordinario sibi commissum, sine eiusdem Ordinarii licentia, deserere praesumentes, suspendantur a divinis ad tempus ab Ordinario secundum diversos casus praefiniendum.

375. Clerics in major Orders who, without the permission of their Ordinary, presume to abandon the work which he has committed to them are to be suspended *a divinis* for a period of time to be determined by the Ordinary according to the gravity of the offence.

The law applies to all clerics in Sacred Orders, not to priests only; the wording of the canon is general, *munus,* and includes any function or work, even though it be not an ecclesiastical office strictly so called.

The presumption required supposes that there is no excuse for the action of the cleric, that he knowingly goes against the will of his Ordinary, etc.

XI. RESIGNATION OF OFFICE OR BENEFICE INTO THE HANDS OF LAYMEN

Can. 2400. Clericus qui in manus laicorum officium, beneficium aut dignitatem ecclesiasticam resignare praesumpserit, ipso facto in suspensionem a divinis incurrit.

376. Clerics who presume to resign into the hands of lay persons an office, benefice or ecclesiastical dignity incur, *ipso facto,* suspension *a divinis.*

The resignation must be a formal although invalid one, made freely and knowingly. The suspension is not reserved.

XII. CONTINUATION IN OFFICE AFTER PRIVATION OR REMOVAL

Can. 2401. Si quis in detinendo officio, beneficio, dignitate, non obstante legitima privatione aut remotione, persistat, aut ne ea dimittat, moras illegitime nectat, ea, praemissa monitione, deserere cogatur per suspensionem a divinis aliasve poenas, depositione, si res ferat, non exclusa.

377. An ecclesiastic who has been legitimately and canonically deprived of, or removed from, an office, benefice, or dignity must surrender it at once. If he persists in holding it or unreasonably multiplies delays, he should be compelled to withdraw by using against him, after proper warning, suspension *a divinis* and other penalties, even deposition if found necessary in the circumstances of the case.

XIII. OMISSION OF THE BLESSING PRESCRIBED FOR ABBOTS

Can. 2402. Abbas vel Praelatus *nullius* qui contra praescriptum can. 322, § 2, benedictionem non receperit, est ipso facto a iurisdictione suspensus.

378. Certain abbots or prelates *nullius* are bound by Apostolic statute or the Constitutions of their Order to receive the blessing within three months from receipt of the Apostolic letters of appointment. (Can. 322, § 2.) If, without legitimate excuse, they neglect to do so, they are, *ipso facto,* suspended from jurisdiction; not, however, from office nor from the exercise of the power of Order. The suspension is not reserved.

XIV. OMISSION OF THE PROFESSION OF FAITH REQUIRED ON APPOINTMENT TO CERTAIN OFFICES

Can. 2403. Qui contra praescriptum can. 1406 fidei professionem sine iusto impedimento emittere negligat, moneatur, praefinito quoque congruo termino; quo transacto, contumax, etiam per privationem officii, beneficii, dignitatis, muneris, puniatur; nec interim beneficii, officii, dignitatis, muneris fructus facit suos.

379. Canon 1406 gives the list of persons who, on being appointed to certain offices or ecclesiastical dignities, are asked to make a profession of faith. Here it is enacted that if, without legitimate excuse, they fail to do so, a warning should be given them and a reasonable time allowed them within which to comply with their obligation. Should they persevere in their disobedience coercion is to be used. They may be deprived of their office, benefice, dignity, or function. Meanwhile they forfeit the right to the revenue or salary of the office or benefice.

TITLE XIX

ABUSE OF ECCLESIASTICAL POWER OR OFFICE

I. GENERAL PRINCIPLE

Can. 2404. Abusus potestatis ecclesiasticae, prudenti legitimi Superioris arbitrio, pro gravitate culpae puniatur, salvo praescripto canonum qui certam poenam in aliquos abusus statuunt.

380. It is the will and command of the Church that all abuse of ecclesiastical power, under whatever form and by whomsoever committed, be repressed prudently but firmly. Superiors are authorized and directed to use the means of correction they may deem suitable, except in the special cases in which the law itself determines the punishment to be imposed.

II. SUBTRACTION, DESTRUCTION, CONCEALMENT, OR MUTILATION OF DOCUMENTS BELONGING TO THE EPISCOPAL CURIA

Can. 2405. Vicarius Capitularis aliive omnes tam de Capitulo, quam extranei, qui documentum quodlibet ad Curiam episcopalem pertinens sive per se sive per alium subtraxerint vel destruxerint vel celaverint vel substantialiter immutaverint, incurrunt ipso facto in excommunicationem Sedi Apostolicae simpliciter reservatam, et ab Ordinario etiam privatione officii, beneficii, plecti poterunt.

381. The Vicar Capitular, members of the chapter or any other persons who take away, destroy, conceal or substantially mutilate documents which belong to the episcopal Curia, incur, *ipso facto,* an excommunication reserved to the Holy See in a simple manner and they may, besides, be deprived of office and benefice by the Ordinary.

The purpose of this censure is to protect the archives of the diocese, particularly during the vacancy of the see. It affects all persons, clerics, or laymen, even the members of the cathedral chapter and the Vicar Capitular himself, not the Bishop.

It does not matter what the nature of the document is, whether it concerns private persons or the affairs of the diocese, but it must belong to the Curia, and be of some importance.

The penalties are incurred also by those who act through others, the *mandantes,* but not by other cooperators.

III. UNFAITHFULNESS IN THE KEEPING OF DIOCESAN OR PAROCHIAL BOOKS

Can. 2406. § 1. Quicunque officio tenetur acta vel documenta seu libros Curiarum ecclesiasticarum vel libros paroeciales conficiendi, conscribendi aut conservandi, si ea falsare, adulterare, destruere vel occultare praesumpserit, suo officio privetur aliisve gravibus poenis ab Ordinario pro modo culpae puniatur.

§ 2. Qui vero acta, documenta vel libros hos legitime petenti exscribere, transmittere seu exhibere dolose detrectaverit aliove quovis modo officium suum prodiderit, privatione officii vel suspensione ab eodem et mulcta ad arbitrium Ordinarii pro gravitate casus puniri potest.

382. Besides the penalties enacted in the preceding canon and which concern all persons who interfere with the documents belonging to the episcopal Curia, there are some which concern officials in charge of either diocesan or parochial books.

1°. Any one who, having been appointed officially to keep or preserve such books or documents, presumes to falsify, adulterate, destroy, or conceal them, should be deprived of his office and otherwise severely punished by the Ordinary according to the gravity of the fault. Presumption is required here.

2°. They are bound to show the said books, acts, or documents; to make and furnish authenticated copies of them to those who legitimately ask for them, *e.g.*, certificates of baptism to persons about to contract marriage. If they maliciously refuse to do so or in any other way betray their office, the Ordinary is to deprive them of the office or suspend them from it and impose upon them a fine according to the gravity of the case.

IV. ATTEMPTED BRIBERY OF OFFICIALS OF THE CURIA

Can. 2407. Qui Curiae officiales seu administros quosvis ecclesiasticos, iudices, advocatos vel procuratores donis aut pollicitationibus ad actionem vel omissionem officio suo contrariam inducere tentaverit, congrua poena plectatur et ad reparanda damna, si qua illata sint, compellatur.

383. Any person who tries to exercise undue influence upon members of the Curia or ecclesiastics in an official position, such as judges, advocates, or procurators, and endeavors, by means of presents or promises, to lead them into actions or omissions contrary to the obligations of their office, should receive a punishment proportioned to his fault and be compelled to make reparation for the injury he may have caused thereby.

It is the attempt which is punished here, even though it has been unsuccessful, as, it is supposed, will ordinarily be the case.

V. EXACTION OF TAXES NOT APPROVED BY LAW

Can. 2408. Taxas consuetas et legitime approbatas ad normam can. 1507, augentes aut ultra eas aliquid exigentes, gravi mulcta pecuniaria coerceantur, et recidivi ab officio suspendantur vel removeantur pro culpae gravitate, praeter obligationem restituendi quod iniuste perceperint.

384. The taxes or contributions to be paid for the various acts of voluntary jurisdiction, like the concession of dispensations, or on the occasion of the administration of sacraments and sacramentals or of funerals, must be determined by the Provincial Council or by the Ordinary of the diocese (can. 1234, 1507); once this has been done, any one demanding fees in addition to or in excess of those which are approved, should be punished with heavy pecuniary fines. After a second offence he is to be deprived of his office or even deposed if the fault be particularly grave. He is bound, moreover, to restore all that he has thus unjustly obtained.

VI. ILLEGITIMATE CONCESSION OF DIMISSORIAL LETTERS BY THE VICAR CAPITULAR

Can. 2409. Vicarius Capitularis concedens litteras dimissorias pro ordinatione contra praescriptum can. 958, § 1, n. 3, ipso facto subiacet suspensioni a divinis.

385. A Vicar Capitular or Administrator of a diocese during the vacancy of the see may, with the consent of the chapter or of the diocesan consultors, grant dimissorial letters, *i.e.,* permission to receive Orders, after one year of vacancy. During this first year he may grant them only to candidates who are *arctati,* that is, who must receive Orders on account of some benefice which they have obtained, or are to obtain, or on account of some particular office in the diocese which must be filled without delay. (Can. 958.)

Vicars Capitular or Administrators granting dimissorial letters outside of these cases would, *ipso facto,* incur a suspension *a divinis.*

VII. VIOLATION OF THE RIGHTS OF THE ORDINARY IN REGARD TO THE ORDINATION OF RELIGIOUS

Can. 2410. Superiores religiosi qui, contra praescriptum can. 965–967, subditos suos ad Episcopum alienum ordinandos remittere praesumpserint, ipso facto suspensi sunt per mensem a Missae celebratione.

386. Regularly, Religious must be ordained by the Bishop of the place in which is located the house to which they belong. Religious superiors may send their subjects for ordination to another Bishop only in the following cases: if the Bishop of the place gives permission; if he is of a different rite; if he is absent or is not to have any ordination on the next regular ordination day; or if the diocese is vacant and the Administrator has not the episcopal character. Candidates should not be fraudulently transferred from one house to another, nor their ordination purposely set for a time when the local Ordinary will be absent or is not to have any ordination. (Can. 965–967.)

Presumptuous violation of these rules by religious superiors is punished, *ipso facto,* by suspension from the celebration of Mass for a month.

VIII. ADMISSION TO THE NOVITIATE OR TO RELIGIOUS PROFESSION OF A CANDIDATE WITHOUT THE REQUIRED QUALIFICATIONS OR TESTIMONIALS

Can. 2411. Superiores religiosi qui candidatum non idoneum contra praescriptum can. 542, aut sine requisitis litteris testimonialibus contra praescriptum can. 544, ad novitiatum receperint, vel ad professionem contra praescriptum, can 571, § 2 admiserint, pro gravitate culpae puniantur, non exclusa officii privatione.

387. Certain qualifications are demanded by law of candidates to Religious Orders for admission into the novitiate. (Can. 542.) They must have also a certificate of baptism and confirmation and various testimonial letters according to the case. (Can. 544.) After completion of the novitiate they are admitted to profession if they are found fit; otherwise, they must be dismissed. (Can. 571, § 2.)

Religious superiors admitting to the novitiate or to profession candidates who do not fulfil these conditions should be punished according to the gravity of the fault, and may even be deprived of office.

IX. ILLEGITIMATE USE OF RELIGIOUS DOWRIES AND ADMISSION TO NOVITIATE OR TO PROFESSION WITHOUT NOTIFYING THE LOCAL ORDINARY

Can. 2412. Religiosarum etiam exemptarum Antistitae pro gravitate culpae, non exclusa, si res ferat, officii privatione, ab Ordinario loci puniantur:

1.° Si contra praescriptum can. 549 dotes puellarum receptarum quoquo modo impendere praesumpserint, salva semper obligatione de qua in can. 551;

2.° Si contra praescriptum can. 552 omiserint Ordinarium loci certiorem facere de proxima alicuius admissione ad novitiatum vel ad professionem.

388. 1°. The dowry provided by the Religious for their support, in accordance with the rules of the Order or legitimate customs, must be placed by the superioress in a safe, lawful, and productive investment; and it is strictly forbidden, before the death of the Religious, to expend it for any purpose, even for the building of a house or the payment of debts. (Can. 549.) If, for whatever reason, a professed Religious leaves the institute her dowry must be returned to her in its entirety. (Can. 551.)

2°. The superioress, even of exempt Religious, must notify the local Ordinary, at least two months in advance, of the intended admission of candidates to the novitiate or to the profession of either temporary or perpetual, simple or solemn vows. (Can. 552.)

A superioress, even of exempt Religious, who would violate these rules should receive from the Ordinary of the place a punishment proportioned to the gravity of her fault and even be deprived of her office if the nature of the case demands it.

X. INTERFERENCE BY RELIGIOUS SUPERIORS WITH THE CANONICAL VISITATION

Can. 2413, § 1. Antistitae quae post indictam visitationem religiosas in aliam domum, Visitatore non consentiente, transtulerint, itemque religiosae omnes, sive Antistitae sive subditae, quae per se vel per alios, directe vel indirecte, religiosas induxerint ut interrogatae a Visitatore taceant vel veritatem quoquo modo dissimulent aut non sincere exponant, vel eisdem, ob responsa quae Visitatori dederint, molestiam, sub quovis praetextu, attulerint, inhabiles ad officia assequenda, quae aliarum regimen secumferunt, a Visitatore declarentur et Antistitae officio, quo funguntur, priventur.

§ 2. Quae in superiore paragrapho praescripta sunt, etiam virorum religionibus applicentur.

389. The law of the Church demands that higher superiors of Religious Orders or Congregations and local Ordinaries should visit, at stated intervals, all the houses subject to them. (Can. 511–512.) The visitor has the right and duty to interrogate any of the Religious who, in his judgment, should be interrogated, and to inquire about all those things which come within the scope of the visitation.

All Religious must answer according to the dictates of their conscience and superiors should not dissuade them from doing their duty, or in any way impede the carrying out of the law.

Superiors should not, when the visitation has been announced, send Religious to another house without the visitor's consent.

Neither the superiors nor any of the members of the community should, directly or indirectly, personally or through others, induce Religious to conceal the truth from the visitor, to keep silence when questioned, or to answer the questions untruthfully; nor should any one be molested on account of the answers given.

Those who interfere with the visitation in any of these ways are to be declared by the visitor incapable of being placed in authority over others, and superiors should be deprived of the office they hold.

This law applies to superiors and members of religious institutes of men as well as of women.

XI. INTERFERENCE BY SUPERIORESSES WITH THE LIBERTY GRANTED BY LAW TO RELIGIOUS IN THE MATTER OF CONFESSION

Can. 2414. Antistita quae contra praescriptum can. 521, § 3, 522, 523 se gesserit, a loci Ordinario moneatur; si iterum deliquerit, ab eodem officii privatione puniatur, illico tamen certiore facta Sacra Congregatione de Religiosis.

390. In order to insure perfect liberty of conscience in religious houses of women, the law provides that, besides the ordinary and extraordinary confessors, there should be several priests designated for each house to whom the Religious may easily have recourse for confession in particular cases. When a Religious asks for one of these confessors, no superioress is allowed either directly or indirectly, either personally or through others, to ask for the reasons or to refuse the request in word or in deed, or to manifest displeasure in any way. (Can. 521.)

If, moreover, a Religious, for her peace of conscience, goes to a priest approved by the local Ordinary for hearing the confessions of women, her confession is both valid and licit, whether made in a church, public or semi-public chapel. Neither may the superioress raise any opposition to this or inquire about the matter; nor are the Religious obliged to report to her. (Can. 522.)

Religious who are seriously sick, even though not in danger of death, may call any priest approved for hearing the confessions of women and confess to him while the illness lasts, and again the superioress has no right to forbid this either directly or indirectly.

A superioress who would not conform to these rules should be given a warning by the Ordinary of the place. After a second offence, the Ordinary is to punish her with deprivation of office and report the matter at once to the Sacred Congregation of Religious.

APPENDIX

CLASSIFIED LIST OF CENSURES LATAE SENTENTIAE

For the convenience of confessors a list is given here of the censures *latae sententiae,* arranged, as in the Constitution *Apostolicae Sedis,* according to the power required to absolve from them.

A. EXCOMMUNICATIONS

They are about forty-three in number and fall into five classes; (*a*) those reserved to the Holy See in a very special manner; (*b*) those reserved to the Holy See in a special manner; (*c*) those reserved to the Holy See in a simple manner; (*d*) those reserved to the Ordinary; (*e*) those which are not reserved.

I. EXCOMMUNICATIONS RESERVED TO THE HOLY SEE IN A VERY SPECIAL MANNER

This division is not found in the Constitution *Apostolicae Sedis,* but it had existed in practice for a long time. Such excommunications are incurred:

1°. By those who throw away the Consecrated Hosts or carry them off or keep them for an evil purpose. (Can. 2320.) This is a new censure.

2°. Those who lay violent hands on the person of the Roman Pontiff. (Can. 2344.)

3°. Confessors absolving or pretending to absolve an accomplice in *peccato turpi.* (Can. 2367.)

4°. Confessors violating the seal of confession directly. (Can. 2369.) New censure.

II. EXCOMMUNICATIONS RESERVED TO THE POPE IN A SPECIAL MANNER

They are incurred by the following offenders:

1°. Apostates, heretics, schismatics. (Can. 2314.)

2°. Publishers, defenders, readers, keepers of certain books propounding apostasy, heresy, or schism, or condemned by Apostolic letters. (Can. 2318.)

3°. Persons who not being ordained priests pretend to celebrate Holy Mass or hear sacramental confession. (Can. 2322.) A new censure.

4°. Those who violate certain laws regarding Papal elections. (Can. 2330.)

5°. All who appeal from the Pope to a General Council. (Can. 2332.)

6°. Any one who has recourse to the civil power to impede the letters of the Holy See or of its Legates. (Can. 2333.)

7°. Those who publish laws against the rights of the Church. (Can. 2334.)

8°. Persons bringing before a lay judge Cardinals, Roman Legates, higher officials of the Roman Curia, or their own Ordinary. (Can. 2341.)

9°. Those who lay violent hands on Cardinals, Legates, Patriarchs, Archbishops, or Bishops. (Can. 2343.)

10°. Usurpers or holders of property or rights belonging to the See of Rome. (Can. 2345.)

11°. Any one who forges or falsifies decrees of the Holy See or knowingly uses such false documents. (Can. 2360.)

12°. Any person bringing a false charge of solicitation against a confessor. (Can. 2363.) A new censure.

III. EXCOMMUNICATIONS RESERVED TO THE POPE IN A SIMPLE MANNER

They befall:

1°. Traffickers in indulgences. (Can. 2327.)

2°. Members of Masonic or similar societies. (Can. 2335.)

3°. Confessors who, without the necessary faculties, absolve from excommunications reserved to the Holy See in a special or very special manner. (Can. 2338.)

4°. All who aid or abet an *excommunicatus vitandus,* and clerics who communicate with him *in divinis.* (Can. 2338.)

5°. Those who bring before a lay judge Bishops, prelates or certain religious superiors. (Can. 2341.)

6°. Any person who, without permission, enters the enclosure of nuns. (Can. 2342.)

7°. Women encroaching upon the enclosure of regulars and superiors, or others who admit them. (Can. 2342.)

8°. Nuns of Papal enclosure who leave it without due permission. (Can. 2342.)

9°. Usurpers or unjust holders of ecclesiastical property. (Can. 2346.)

10°. Duellers. (Can. 2351.)

11°. Clerics in Sacred Orders and Religious with solemn vows attempting to contract marriage, and those who contract with them. (Can. 2388.)

12°. Persons who commit simony in connection with offices, benefices, or ecclesiastical dignities. (Can. 2392.)

13°. Vicars Capitular and all other persons who steal, destroy, conceal, or mutilate documents belonging to the Episcopal Curia. (Can. 2405.) A new censure.

IV. EXCOMMUNICATIONS RESERVED TO THE ORDINARY

They are incurred by the following persons:

1°. Catholics who marry before a non-Catholic minister. (Can. 2319.)

2°. Catholics who contract marriage with the implicit or explicit understanding that the children will be educated outside of the Catholic Church. (Can. 2319.)

3°. Catholics who knowingly present their children to a non-Catholic minister for Baptism. (Can. 2319.)

4°. Catholic parents, or those holding their place, who have their children brought up outside of the Catholic Church. (Can. 2319.)

5°. Persons who manufacture false relics or knowingly sell, distribute, or expose them for public veneration. (Can. 2326.) A new censure.

6°. Persons who lay violent hands on clerics or Religious. (Can. 2343.)

7°. Those who procure abortion. (Can. 2350.)

8°. Apostate Religious. (Can. 2385.)

9°. Religious with simple perpetual vows who contract or attempt marriage, and those who contract them. (Can. 2388.) A new censure.

V. NON-RESERVED EXCOMMUNICATIONS

An excommunication reserved to no one is incurred by:

1°. Authors or editors who publish the Bible or works on the Bible without due permission. (Can. 2318.)

2°. Those who compel the granting of Christian burial to persons excluded from it by law. (Can. 2339.)

3°. Persons alienating Church property of great value without permission from the Holy See. (Can. 2347.)

4°. Persons interfering with the freedom of clerical or religious vocations. (Can. 2352.)

5°. Penitents refusing to denounce a confessor guilty of solicitation. (Can. 2368.)

B. INTERDICTS

1°. An interdict reserved to the Holy See in a special manner is incurred by universities, colleges and other moral bodies appealing from the Pope to a General Council. (Can. 2332.)

2°. Those who violate a local, or cooperate in the violation of a personal, interdict incur themselves an interdict *ab ingressu ecclesiae* reserved to the superior whose authority was despised. (Can. 2338.)

3°. A personal interdict is incurred by those who are the cause of a local or general interdict. (Can. 2338.)

4°. An interdict *ab ingressu ecclesiae* is visited upon those who freely grant Christian burial to persons who are not entitled to it by law. (Can. 2339.)

C. SUSPENSIONS

I. Suspensions Reserved to the Holy See

They are incurred by:

1°. The consecrating prelate, his assistants and the consecrated Bishop when a consecration is made without Apostolic mandate. (Can. 2370.)

2°. Clerics promoted to Orders by simony or administering and receiving any of the other sacraments through simony. (Can. 2371.)

3°. Those who receive Orders from a prelate censured by sentence or whose apostasy, heresy, or schism are notorious. (Can. 2372.)

4°. Religious in Sacred Orders whose profession is declared null because of deceit on their part. (Can. 2387.)

II. SUSPENSIONS RESERVED TO THE ORDINARY

1°. A cleric who brings before the civil court an ecclesiastic or a Religious is suspended from office. (Can. 2341.)

2°. A fugitive Religious incurs a suspension reserved to his superior. (Can. 2386.)

III. NON-RESERVED SUSPENSIONS

They affect:

1°. Priests who hear confessions or absolve from reserved sins without the necessary faculties. (Can. 2366.) A new censure.

2°. Clerics who are ordained without dimissorial letters, before the canonical age or *per saltum.*

3°. Clerics who resign an ecclesiastical office, benefice, or dignity into the hands of laymen. (Can. 2400.) A new censure.

4°. An abbot who does not receive the abbatial blessing. (Can. 2404.)

5°. A Vicar Capitular or Administrator who grants dimissorial letters contrary to law. (Can. 2409.)

6°. Religious superiors who do not send their subjects to be ordained by the Bishop of the place as prescribed by law. (Can. 2410.) A new censure.

INDEX

(The references are to the marginal numbers.)

A

Abbot, not receiving blessing, 378.
Abduction, nature, 311; former law, 311; present law, 312.
Abortion, procuring, 304, 305.
Absolution, 64; ordinary power for, 65, 66; quasi-ordinary power, 67–70; conditions for, 71; from censures, 89; from several censures, 90; from censure and sin, 91; in the internal and external forum, 92; in danger of death, 94; in case of necessity, 97–106; outside of such, 95, 96; from apostasy, heresy, schism, 203; given without necessary jurisdiction, 328, 329; of an accomplice, 330–332.
Abuse of power, 380.
Accidental violation of law, 13.
Accomplice, in sin, notion, 330; absolution of, 332.
Acts, legitimate, 109, 119.
Administration of sacraments; privation of, by excommunication, 117.
Admonitions, necessity of, 60, 61; as penal remedies, 180, 181.
Adultery, 317–319.
Age and imputability, 14, 52.
Alienation of ecclesiastical property, 298–301; law on, 298; permissions required, 298, 299; sanctions, 300, 301.
Ambulatorium, 126.
Anathema, 114.
Apostasy; nature of, 192; punishment, 190, 194, 201; absolution from, 202, 203; from religion, 357–359.
Apostolicae Sedis, Constitution, its purpose, 189.
Appeal, from censures, 80; from Pope to Council, 246–248.
Application of penalties, 37, 41.
Attempt at delinquencies, 27, 28; its imputability, 29–31.

B

Baptism by a non-Catholic minister, 215.
Benefice, loss of, by excommunication, 122; suspension from, 154; exclusion from, by infamy, 161; privation of, 165.
Bigamy, 315.
Bishops, power of, to impose penalties, 38; to release from

them, 65, 67; in public cases, 69, 70; in occult cases, 70.
Blasphemy, 225, 226.
Books, forbidden, 209–212; parochial books, not properly kept, 354, 356; falsified, destroyed, not shown, 382.
Bribery of officials, 383.
Burial, Christian, 116; refused to some, 268; what it includes, 269; violation of laws regarding, 270.

C

Canon, Theologian and Penitentiary neglecting duty, 356.
Canonis Privilegium: origin, 287; present law, 288; penalties, 289–292; conditions for incurring them, 291.
Cemeteries, violation of, 141.
Censures, 34, 70; nature of, 74–76; use of, 77; conditions for, 78; appeal from, 80; threat of, 81; multiplication of, 82; reservation of, 84–88; absolution from, 89; from several, 90; from censure and sin, 91; in internal and external forum, 92, 93; in case of danger of death, 94; of necessity, 97–106; censures in particular, kinds, 107; characteristics, 108; violation of, 262–266; obduracy in, 271.
Ceremonies, neglect of, 348.
Cessation from divine services, 144.
Civil authority, recourse to, 249–251.
Christian burial, privation of, by excommunication, 110; as vindictive penalty, 159; violation of laws regarding, 268–270.
Church, violation of, 164; interference with rights of, 253, 254.
Commerce, commercial trading forbidden to clerics, 350.
Communication *in divinis*, with *excommunicati vitandi*, 263, 265; with heretics, 207.
Community, interdict on, 127, 138, 158.
Community life, neglect of, 364.
Concubinage, 317–319.
Conferences, absence from ecclesiastical, 347.
Confession, seal of, its obligation, 337; violation, 337; penalties, 338; interference with freedom of, 380.
Confessor, power of, to absolve from censures in danger of death, 94; in urgent necessity, 97–106; to release from vindictive penalties, 157.
Confirmation, administered without faculty, 327.
Consecrated Species, profanation of, 217–219.
Consecration of Bishop, without the Apostolic mandate, 339; not received in due time, 374.
Conspiracy against ecclesiastical authority, 245.
Contributions, refusal of, 303.
Contumacy, 79.

Cooperation in delinquencies, 20; imputability, 21–23; penalties, 53; in heresy, 206–207.
Correction, as penal remedy, 180; form of, 181.
Corpses, violation of, 239, 240.
Counsel in cooperation, 20, 23, 24.
Court, privilege of, lost by excommunication, 119; *see* privilege.

D

Declaratory sentence, 35, 57, 58.
Degradation, nature, 168; power of, 169; in modern times, 174; cases of, how tried, 175.
Deliberation, lack of, and penalties, 50.
Delinquency, nature of, 2; malice and gravity, 4; quality and quantity, 4, 5; kinds, occult, public, notorious, 6; ecclesiastical, civil, mixed, 7; of common law, 8; imputability of, 9–11; juridical effects, 25; attempted, 25; frustrated, 28, 63.
Denunciation, of solicitation, 335, 336.
Deposition, nature of, 168; power of, 169; cases of, how tried, 170.
Dignitaries, personal offences against, 292.
Dignities, lost by excommunication, 122; privation, 165.
Dignity and responsibility, 18.
Diligence, neglect of, 13.
Dimissorial letters, granted by Vicars Capitular, 385; by religious superiors, 386.
Disability, nature, effects, removal, 162.
Disobedience to ecclesiastical authority, 244.
Dispensation, from penalties, 64; by ordinary power, 65, 66; quasi-ordinary power, 67–70; conditions for, 71; from vindictive penalties, 157.
Doctrine, teaching condemned doctrine, 208.
Dowry, illegitimate use of, 388.
Dress, ecclesiastical, neglect of, 349; prohibition to wear, 166.
Drunkenness and imputability, 11, 50.
Duelling, 307–309.

E

Elections, delinquencies in Papal, 242, 243; interference with freedom of canonical, 365; of unworthy candidates, 366.
Enclosure, canonical, 280; Papal, 281; episcopal, 282; penalties for violation of, 283–286.
Entry into church, interdict from, 141.
Error and imputability, 12.
Examinations, refusal to take, prescribed for young priests, 346.

Excommunication, 108; origin, nature, 111; degrees, 112, 113; effects, 115–123.
Exile, 167.

F

Faith, delinquencies against, 191.
False charge of solicitation, 324, 325.
Falsehood, *falsum*, falsification, 320, 321.
Favoring heresy, 213–216.
Fear, 15; and imputability, 16; and penalties, 51.
Fees, illegitimately exacted, 384.
Ferendae sententiae, 35.
Fines, pecuniary, 163.
Flight from religion, 360.
Forgery or falsification, of Pontifical documents, 321; of others, 323.
Fori, Privilegium, lost by excommunication, 119; violation of, 272–275; penalties, 276; by whom incurred, 277; conditions, 278, 279.
Fraud, in religious profession, 361.
Frustrated delinquencies, 28.
Fugitive Religious, 360.

G

Graves, violation of, 239, 240.

H

Heresy, nature of, 192; punishment, 195–197, 201; absolution from, 202, 203; suspicion of, 204, 205; cooperation in, 206.
Heretics, communication with, 207; favoring, 213, 214.

I

Ignorance, nature and kinds of, 12, 48; excuses from penalties, 48, 49.
Imputability, of delinquencies, 9; causes lessening, 9–19.
Indulgences, lost by excommunication, 118; loss of, as vindictive penalty, 158; traffic in, 236–238.
Infamy, nature and kinds of, 160; effects, 161; cessation, 161.
Injunction, as penal remedy, its nature, conditions, 182; form, 183.
Insanity and imputability, 10, 50.
Interdict, 108; its nature, 124, 125; kinds, 126–128; origin, 129; development, 130, 131; power to impose, 132; effects of, general local, 134, 135; particular local, 136, 137; gen-

eral personal, 138, 139; particular personal, 140; from entry into church, 140; particular mixed, 142; violation of local, 260; persons giving cause for local, 267.
Interference, with rights of the Church, 253–255.
Interpretation of penalties, 37, 190

J

Jurisdiction lost by excommunication, 120; suspension from, 150, 153; interference with exercise of ecclesiastical, 253, 254; recourse to civil authority, 249–251; to popular agitation, 260.

L

Latae sententiae, punishments, 35; when they take effect, 54–58.
Laws, against rights of the Church, 253.
Legacies, pious, neglect in executing, 302.
Legitimate ecclesiastical acts, 109.

M

Malice of delinquencies, 4, 9.
Mandans, 20, 23.
Marriage, contracted before a non-Catholic minister, 213; with condition that children will be educated outside of the Church, 216; with impediment of mixed religion, 345; by Religious, clerics in Sacred Orders, 362, 363.
Masonry, Masons, 256–259; absolution of Masons, 259.
Mass, celebrating twice, 220, 222; not fasting, 221, 222; simulating, 223, 224; stipends, 228–230.
Medicinal penalties or censures, 34, 70; *see* censures.
Minister, marriage celebrated before non-Catholic, 213; children presented to, for baptism, 215.
Morals, delinquencies against, 316–319.
Multiplication of delinquencies and punishments, 43; of censures, 82, 83.

N

Necessity, absolution in cases of, 97–106.
Negligence, neglect of diligence, 13.
Notoriety of law, of fact, 6.
Novitiate, admission to, without required qualifications or testimonials, 387; without notifying Ordinary, 388.
Number of punishments, 43.

O

Obduracy, in censures, 271.
Obreption, in petition for Rescripts, 322.
Office, loss of, by excommunication, 121; suspension from, 150, 153; exclusion from, by infamy, 161; excommunication, 265; privation of, 165; irregular appointment to, 369–372; dereliction of, 372; resignation of, to laymen, 376.
Offices, divine, 109, 115, 265; exclusion from, by excommunication, 119.
Orders, received by one under excommunication, 121; from one under censure, 341; uncanonically, 342, 343; suspension from, 151.
Ordination, without dimissorial letters or testimonials or canonical title, 342; against canonical rules, 343, 344; of Religious, outside of diocese, 386.

P

Parents, who agree to have children educated outside of the Church, 214, 216; baptized by non-Catholic minister, 215.
Parochial duties, neglect of, 352, 353.
Passion, nature and kinds, 17; imputability and, 17, 50.
Pastors, have no coercive power, 38; inciting people to oppose exercise of ecclesiastical jurisdiction, 260; neglecting duties, 352.
Penal remedies, nature, 176, 177; use, 178; kinds, 178; admonition and correction, 180; precept or injunction, 182, 183; surveillance, 184.
Penalties, 32; nature, 33; kinds, 34; ways of inflicting them, 35; application, 36, 41; interpretation, 37; enactment, 38–40; persons subject to, 45; conditions for incurring, 45–47; causes excusing from, 48–52; when penalties cease, 47; when they take effect, 54–58; when they can be inflicted, 59–61; remission of, 64–73; codification and classification of, 188–190; vindictive, 156; prescription of, 72.
Penances, 185; nature and kinds of, 186; principal, 187.
Perjury, 227.
Pontificals, suspension from, 151.
Precept or injunction, 182, 183.
Prescription of penalties, 72.
Profanation of Consecrated Species, 217–219.
Profession of faith omitted, 379; irregular admission to Religious, 387, 388.
Property, confiscation of ecclesiastical, 294–297; alienation of, 298; permission required, 299; sanctions, 300, 301.

R

Recidivus, 19.
Recourse, against censures, 80; to civil authority, 249–251.
Relapse, 19.
Relics, traffic in false, 234, 235.
Religious, apostate, 357–359; fugitive, 360; contracting marriage, 362; unfaithful to community life, 364.
Remedies, penal, 176–179.
Reservation, of censure, 84; kinds, 85, 86; restrictions on, 87, 88; of sin, 325.
Residence, violation of law of, 351; prohibition as to, 167.
Resignation, of benefice into hands of lay persons, 376.
Roman Church, encroachment upon property of, 293.
Rubrics, neglect of, 348.

S

Sacraments, sacramentals, privation of, 116, 117; during interdict, 134, 144; administration of, to unworthy, 326; simony in administration and reception of, 340.
Sacrilege, 317, 231, 232.
Schism, nature of, 193; punishment, 198, 201; absolution from, 202, 203.
Seal of confession, violation of, 337.
Sentence, declaratory, condemnatory, 35, 57, 58.
Simony, in administration and reception of sacraments, 340; in connection with ecclesiastical offices, benefices, dignities, 367.
Simulation of priestly powers, 223, 224.
Societies, forbidden or condemned under censure, 257.
Sodomy, 317–319.
Solicitation, false charge of, 324; penalties, 325; crime of solicitation, 333, 334; obligation of denouncing, 335; penalties for confessor and penitent, 336.
Species, profanation of Consecrated, 217.
Stipends, trafficking in Mass, 228–230.
Suicide, 306.
Superstition, 231, 232.
Surveillance, as penal remedy, 184.
Suspension, 108; nature, 145, 146; origin, 147; development, 148; kinds, 149–154; as vindictive penalty, 164.
Suspicion of heresy, 204, 205.

T

Taxes, refusal of, 303; exaction of taxes not approved, 384.
Teaching condemned doctrine, 208.

Threat of censures, 81.
Trading, commercial, forbidden to clerics, 350.
Traffic, in Mass stipends, 228–230; in false relics, 233, 234; in Indulgences, 236.
Transfer, penal, of episcopal see or parish, 158, 160.

V

Veto, in Papal elections, 243.
Vicar Capitular, interfering with diocesan documents, 381; granting dimissorial letters, 385.
Vicar-General, has no coercive power, 38.
Vindictive penalties, nature of, 34; appeal from, 156; release from, 157; principal, 158.
Visitation, interference with canonical, 389.
Vitandus, excommunicatus, 113, 264, 265.
Vocation, interference with clerical or religious, 310.

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